Timothy Cunningham

A NEW TREATISE ON THE LAWS For Preſervation of the GAME:

CONTAINING

All the STATUTES, CASES at LARGE, ARGUMENTS, RESOLUTIONS, and JUDGMENTS concerning it; equally uſeful to the Gentleman and Farmer; as the Gentleman may learn how far his Privilege extends, and the Farmer may be enabled to know when the Gentleman exceeds the Limits preſcribed by Law, and the proper Methods of Redreſs.

Together with

All the ACTS of PARLIAMENT relating to the SALE of FISH in the Cities of LONDON and WESTMINSTER.

By a GENTLEMAN of the *Middle-Temple.*

The SECOND EDITION, with the Addition of the late FISH-ACT, ſeveral Caſes on the GAME-ACTS determined in the *King's Bench* ſince the time of Lord *Mansfield*'s coming to preſide in that Court, and Tables of the Titles, Acts of Parliament, &c.

S
UK
948.4
CUN

LONDON:
Printed by His Majeſty's Law Printers,
And ſold by M. THRUSH at the *King's Arms*, in *Saliſbury-Court, Fleet-Street*, 1766.

T 7
C 973 G

ADVERTISEMENT.

A Treatiſe on the laws for preſervation of the game is ſo neceſſary a companion for the juſtice of the peace, the attorney, the ſporting gentleman, and the farmer, that there needs very little apology for introducing to the public a new book on that ſubject. It is very neceſſary for the juſtice of the peace, becauſe matters of this nature are frequently brought in judgment before him; nor is it to be doubted, that the attorney has alſo frequent occaſion in the courſe of his practice to conſult the laws concerning the game: And it is abſolutely neceſſary for the ſporting gentleman, as he may with certainty become acquainted with a law that concerns himſelf, and thereby learn how far he may act with ſafety in the purſuit of his rural pleaſures. And the farmer too may be enabled to know when the gentleman exceeds the limits preſcribed by law, and what is the propereſt method to ſeek redreſs when he is aggrieved. Another reaſon, why a new *treatiſe on the Game-Law is become neceſſary, is, the multiplicity of new ſtatutes that have been paſſed, and the caſes that have been determined within theſe few years, and which have almoſt intirely altered the face of the Law with reſpect to theſe matters.*

Middle-Temple,
Nov. 1764.

717936

Advertiſement concerning the *Second Edition.*

The Appendix to this Edition, (which begins in page 325.) *contains the late Fiſh-Act, ſeveral Caſes on the Game-Acts, determined in the* King's Bench *ſince the time of Lord* Mansfield's *coming to preſide in that Court, and Tables of the Titles, Acts of Parliament*, &c.

Auguſt, 1766.

LAWS

OF THE

GAME.

BEFORE we come to the ſtatutes made for the preſervation of the Game, it may be neceſſary to obſerve how this matter ſtood at Common Law; and this depends upon the difference made between tame and wild Animals.

The tame animals, ſuch as * horſes, cows, Sheep, &c. are ſuch creatures, as by reaſon of

---

* Hens and chickens are tame; ſo peacoks, like other domeſtick fowl, are tame by nature. *Offic. Ex.* 83. 1 *Rol. Abr.* 5. 18 *Hen.* 8. 2. So ſeveral ſorts of dogs are tame, as the maſtiff, hound, which comprehends greyhound, &c. ſpaniel and tumbler; and for theſe a perſon may maintain an action of treſpaſs, without alledging that they were tame. *Cro. Eliz.* 125. *Ireland* and *Higgins.* 1 *Sand.* 84. cited and agreed. —— So a perſon may juſtify in aſſault and battery in defence of his dog, that it is tame. *Raſt. Ent.* 611. —— So a replevin lieth of a ferret. *Cro. Eliz.* 126.

their ſluggiſhneſs and unaptneſs for motion do not fly the dominion of mankind, but generally keep within the ſame purlieus and paſtures, and may be eaſily purſued and overtaken if by accident they ſhould eſcape; and therefore the owner hath the ſame kind of property in them as he hath in all other inanimate chattels, and for the violation thereof may bring an action of treſpaſs.

7 Co. 16, 3 Lev. 227. The wild animals, ſuch as deer, hares, foxes, &c. are underſtood thoſe which by reaſon of their ſwiftneſs or fierceneſs fly the dominion of man, and in theſe no perſon can have a property, unleſs they be tamed or reclaimed by him; and as property is the power that a man hath over any other thing for his own uſe, and the ability that he has to apply it to the ſuſtentation of his being, when that power ceaſes his property is loſt; and by conſequence an animal of this kind, which after any Seizure eſcapes into the wild common of nature, and aſſerts its own liberty by its ſwiftneſs, is no more mine than any creature in the *Indies*, becauſe I have it no longer in my power or Diſpoſal.

5 Co. 104. Cro. Eliz. 547. Hence it appears, that by the Common Law every man had an equal right to ſuch creatures, as were not naturally under the power of man, and that the meer caption or ſeizure created a property in them, except in the following inſtances.

7 Co. 16, b. 1. By immediate manucaption, or taking them and killing them; for in theſe caſes they belong to ſuch perſon in the ſame manner as any other chattels, and cannot be taken from

him, ſince the firſt ſeizure and caption was ſufficient to veſt the property of them in him.

2. By taking and taming them, and then alſo they belong to the owner, as do all the other tame animals, ſo long as they continue in this condition, that is, as long as they can be conſidered to have the mind of returning to their maſters; for while they appear to be in this ſtate, they are plainly the owner's, and ought not to be violated; but when they forſake the houſes and habitations of men, and betake themſelves to the woods, they are then the property of any man. 7 Co. 16. b. Doct. placit. 314.

3. Another way of gaining property in them is by incloſure, and then the beaſts muſt be underſtood to be mine, as the profits of the ſoil itſelf are, and they can no more be taken and carried off than any other profits of the land; and therefore if incloſed Deer in a park, or paddock, comes in a field or warren, they become ſo my own, that no man ought to kill or take them away; now ſince in this caſe it is the incloſure only that retains them, (for take away the incloſure and they are in their natural liberty,) therefore the party is ſaid to have right as he hath to any other profits there incloſed, and a diſtinct and independent right in every animal. March 49.

4. The king, as an acknowledgment of his dominion over the ſeas and great rivers, by his prerogative has a property in ſome animals under the denomination of royal creatures, as *Sturgeons*, *Whales* and *Swans*, all which are the Natives of Seas and Rivers. 7 Co. 16.

On theſe reaſons and diſtinctions of the Common Law, we may now ſee how the law ſtands with regard to perſons qualified to kill the game, within the ſeveral ſtatutes made for the preſervation thereof. Firſt, it is clear, that if a man purſue deer, hares or conies out of his land, or the lands of another into mine *, and there takes them, they are the hunter's and not mine, becauſe I never had any original property by incloſing them. *Mich.* 9 *Will.* 3. *Sutton* and *Moody*, agreed *per Curiam.*

If a man hunts conies, and kills them in my ground, I may ſeize them, becauſe they are indeed my property by the incloſure; but if he hunts them out of my ground, they are in the condition of natural liberty, and then I cannot take them away from the hunter, for then the property is in no man; but † damages I may have againſt the hunter, for his entering and breaking of my incloſure. *Mich.* 9 *Will.* 3. *Sutton* and *Moody.*

But where a man hunts conies in my warren, or deer in my park, and the warrener purſue them, he may retake them; for the park or warren is an eſtabliſhment by the publick to look after and preſerve the game;

---

* But it is ſaid, that if a man flies his hawk at a pheaſant in his own ground, and the hawk purſues the pheaſant into another's warren, the owner of the hawk cannot juſtify the entering the warren, and taking the pheaſant. 38 *E.* 3. 10. *b.* 12 *Hen.* 8. 10. 2 *Rol. Abr.* 567. *Poph.* 162. *S. C.* cited.

† In ſuch actions there ſhall be no more coſts than damages. *Carth.* 382. 1 *Salk.* 212.

for all things unoccupied, in which no man hath a civil right, is under the regulation of the publick; now in parks and warrens, officers are eſtabliſhed by authority to have an eye over the game, and to keep it within the boundaries; ſo that the property is not altered by driving it out of the incloſures, unleſs it be alſo out of the purſuit of the officers; for, as long as he that is thus truſted doth purſue it, it is not in its natural liberty, but is ſtill belonging to the Warren. 12 *Hen.* 8, 9.

Alſo the Common Law warrants the hunting of ravenous beaſts of prey on another's ground, ſuch as foxes, wolves, badgers, *&c.* ſo that the party in purſuing thoſe through the grounds of another is ſubject to no action whatſoever; but it hath been * reſolved, that the hunting and killing ſuch noxious animals muſt be done in the ordinary and uſual manner; and that therefore the digging for a badger is unlawful, and the party ſubject to an action of treſpaſs.

Pop. 162. Latch 119. See the ſtatute 8 Eliz. c. 15. which gives a reward for killing of vermin.

* Cro. Jac. 321. Gench and Mynns. 2 Bulſ. 60. S. C.

A warrener or keeper of a park may juſtify the Killing of dogs and cats, as well as other vermin, which he finds diſturbing the game in thoſe places.

Cro. Jac. 44. 3 Lev. 28. Cont. 1 Rol. Abr. 567.

A man cannot have an action of treſpaſs on the caſe, for another man's conies breaking into his ground, becauſe they are no longer the other's than while they are incloſed; ſo that no violation ariſes to the property of one man by the beaſts of another, but the conies being in their natural liberty may be lawfully killed by the owner of the ſoil.

5 Co. 104. Cro. Eliz. 547. Moor 420, 421, 423. 1 Rol. Abr. 90, 405. 2 Lev. 291.

March 49. Godb. 174. Raſt. Ent. 650. Regiſ. 93. but 7 Co. 17. cont. et Vide Cro. Car. 553. That treſpaſs lies for breaking his cloſe, and fiſhing *in ſeparali piſcaria ſua*, and for taking *piſces ſuas, &c.* for being alledged to be *in ſeparali piſcaria ſua*, he may ſay they were *piſces ſuas*.

An action of treſpaſs may be brought for taking a man's deer in a park or chaſe, or of conies in his warren, becauſe the law takes notice that they are incloſed, becauſe theſe are proper incloſures for that purpoſe; and conſequently thoſe beaſts are not in their natural liberty, therefore the property is in the plaintiff.

In an action of treſpaſs *quare Clauſum fregit, et damas ipſius le plaintiff cepit et aſportavit*, they ſhall be intended to be incloſed, after a verdict; becauſe when a verdict hath found that they are the deer of the plaintiff, that verdict muſt be intended to be true; therefore the deer muſt be intended ſo to be incloſed, as to be under the plaintiff's power; otherwiſe he could not have property according to the Verdict. *Mich.* 9 *Will.* 3. *Sutton* and *Moody*.

3 Lev. 227. Mallock and Eaſtly adjudged.

But if in treſpaſs *quare duas damas ipſius le plaintiff in quodam clauſo d' l' plaintiff vocat' le park, cepit et aſportavit*, the defendant demurs generally; this hath been ruled to be ill, becauſe the court will not intend them to be tamed or incloſed; and in beaſts, that are in their natural liberty, the plaintiff hath no property; for being only a place called a park, it cannot be underſtood to be a park.

2 Rol. Abr. 138. Poph. 141. Cro. Jac. 382. Godb. 259. Cro. El. 548. 1 Rol. Rep. 136, 200. 2 Rol. Rep. 3, 30. 5 Co. 104.

Any perſon, upon his frank tenement, may erect a dove-houſe, nor can he for ſuch building be indicted in the leet; this was a matter often controverted, becauſe the pigeons and doves were to be accounted as tame animals, inaſmuch as they had *animum revertendi*;

and then whoever did erect ſuch houſes, were anſwerable for the damage; and becauſe they were not liable to every man's action, to avoid multiplicity of ſuits, it was formerly held, that they were indictable in the leet; but the contrary opinion prevailed, becauſe it was allowed the lord of the manor might erect, or permit by his licence any perſon to erect a dove-houſe; but no perſon could raiſe himſelf, or authorize another to erect a nuſance; beſides, theſe animals are rather to be accounted *Feræ Naturæ*; and by conſequence, the only remedy any perſon had for the damage ſuſtained by the birds feeding on his ground, was to kill them and take them to himſelf, which was the proper relief according to the Common Law, in as much as the birds were accounted no man's property.

Thus it appears by the Common Law, that a property in thoſe living creatures, which by reaſon of their ſwiftneſs or fierceneſs were not naturally under the power of man, was gained by the mere caption or ſeizure of them, and that all men had an equal right to hunt and kill them; but as by this toleration perſons of quality and diſtinction were deprived of their recreations and amuſements, it was thought neceſſary to make the laws for preſerving the game from idle and indigent people, who by their loſs of time and pains in ſuch purſuits were very much impoveriſhed.

Laws of the Game. (Conies.)

Stat. *De malefactoribus in parcis*, made *Anno* 21 *E.* 1. *ſtat.* 2. and *Anno Dom.* 1293.

In what caſes the killing of offenders in foreſts, chaſes, or warrens is puniſhable, in what not.

TO the intent that treſpaſſers in foreſts, chaſes, parks, and warrens, may more warily fear hereafter to enter and treſpaſs in the ſame, than they have heretofore; our lord the king, at his parliament after *Eaſter*, the 21ſt year of his reign, at the inſtance of the nobles of his realm, hath granted and commanded to be from henceforth firmly obſerved, that if any foreſter, parker, or warrener, ſhall find any treſpaſſers wandring within his liberty, intending to do Damage therein, and that will not yield themſelves to the foreſters, warreners or parkers, after hue and cry made to ſtand unto the peace, but do continue their malice, and diſobeying the king's peace, do flee, or defend themſelves with force and arms; although ſuch foreſters, parkers, and warreners, or any other coming in their company, and aiding ſuch foreſters, parkers, and warreners in the king's peace, do kill any offender or offenders being ſo found, either in arreſting or taking them, or any of them, they ſhall not be troubled upon the ſame before the king, or his juſtices, or before any other the king's bailiffs, or any other within any franchiſe or without, nor ſhall loſe for ſo doing either life or limb, or ſuffer any other puniſhment, but ſhall enjoy the king's peace as they did before.

II. Notwithſtanding, let all ſuch foreſters, parkers, warreners, and all others beware, that by reaſon of any malice, diſcord, debate, or other evil will or hatred had before time, they do not maliciouſly pretend againſt any perſon paſſing through their liberties, that they came thither for to treſpaſs or miſdo, when of truth they did nothing, nor were not found as treſpaſſers, nor intending to treſpaſs, and ſo kill them; for if they do, and be convict thereupon, the death of ſuch perſons ſhall be inquired, and execution ſhall be done, in like manner as is done for other of the king's ſubjects ſtanding in his peace, and like as it ought to be done of right, and according to the law and Cuſtom of the Realm.

Stat. 1 *Hen.* 7. *cap.* 7. An act ſhewing the Penalty for Hunting in the night, or with diſguiſing.

Inconveniencies enſuing by Hunting in Warrens, &c. in the Night, or diſguiſed.

ITEM, foraſmuch as before this time, divers ordinances and ſtatutes have been made in divers parliaments holden in the ſame realm, for the punition of inordinate and unlawful huntings in foreſts, parks, and in warrens within the ſaid realm, which ſtatutes and ordinances notwithſtanding, divers perſons in great number, ſome with painted faces, ſome with viſors, and otherwiſe diſguiſed, to the intent they ſhould not be known, riotouſly, and in manner of war arrayed, have oftentimes of late hunted, as well by night as by day, in divers foreſts, parks, and warrens, in divers places of this realm, and in ſpecial in the counties of *Kent*, *Surry*, and *Suſſex*, by colour whereof have enſued in times paſt great and heinous rebellions, inſurrections, riots, robberies, murders, and other inconveniencies, to the provocation and example of riotous and evil diſpoſed perſons of this realm in ſo offending, which offences could not be puniſhed before this time according to the ſaid ſtatutes, ordinances, and laws of this ſaid realm, becauſe that the ſaid miſdoers, by reaſon of their painted faces, viſors, and other diſguiſings could not be known: The king our ſovereign lord, of his noble and abundant grace, conſidering the premiſſes, by the advice and aſſent of the lords ſpiritual and temporal, and commons, in the ſaid parliament aſſembled, and by authority of the ſame, ordaineth, that at every ſuch time as information ſhall be made of any ſuch unlawful huntings by night, or with painted faces, hereafter to be done, to any of the king's counſel, or to any of the juſtices of the king's peace of the county where any ſuch hunting ſhall be had, of any perſon to be ſuſpect thereof, that then it ſhall be lawful to any of the ſame counſel, or juſtices of peace, to whom any ſuch information ſhall be made, to make a warrant to the ſheriff of ſuch county, or to any oonſtable, bailiff, or other officer within the ſame county, to take and arreſt the ſame perſon or perſons of whom any

The penalties for hunting in the night, or with diſguiſes, and to deny it, being examined.

ſuch information ſhall be made, and to have him or them afore the maker of any ſuch warrant, or any other the king's ſaid counſel, or juſtice of his peace of the ſame county; and that the ſaid counſellor, or juſtice of peace, afore whom ſuch perſon or perſons ſhall be brought by his diſcretion, have power to examine him or them, ſo brought afore the ſaid counſellor, or juſtice, of the ſaid hunting, and of the ſaid doers in that behalf; and if the ſame perſon wilfully conceal the ſaid huntings, or any perſon with him defective therein, that then the ſame concealment be againſt every ſuch perſon ſo concealing felony, and the ſame felony to be inquired of and determined, as other felonies within this realm have uſed to be; and if he then confeſs the truth, and all that he ſhall be examined of, and knoweth in that behalf, that then the ſaid offences of huntings by him done, be againſt the king our ſovereign lord, but treſpaſs finable, by reaſon of the ſame confeſſion, at the next general ſeſſions of the peace, to be holden in the ſame county by the king's juſtices of the ſame ſeſſions, there to be ſeſſed. And if any reſcous or diſobeyſance be made to any perſon having authority to do execution or juſtice by any ſuch warrant, by any perſon the which ſo ſhould be arreſted, ſo that the execution of the ſame warrant thereby be not had, that then the ſame reſcous and diſobeyſance be felony, enquirable and determinable as is aforeſaid.

The penalty if the offender conceal the truth.

Reſcous of an offender felony.

Hunting diſguiſed, or in the night, is felony.

And over this it is enacted and eſtabliſhed by the ſaid authority, that if any perſon or perſons hereafter be convicted of any ſuch huntings, with painted faces, viſors, or otherwiſe diſguiſed, to the intent they ſhould not be known, or of unlawful hunting in time of night, that then the ſame perſon or perſons ſo convict to have like punition, as he or they ſhould have, if he or they were convict of felony.

[*The following commentary upon the foregoing Act, is taken from the 3d part of Lord* Coke's *Inſtitutes, Chap.* 21.]

Now let us peruſe the words of this new, and ill-penned law.

By night, or with painted faces] That is to ſay, either by night, or in the day with painted faces; for that doth equal the caſe of the night, in reſpect the offenders cannot be known, or diſcerned, in regard of ſuch diſguiſings. And although the body of the act ſpeaketh only of painted faces, yet it extendeth to viſors and other diſguiſings; for thoſe words are in the preamble rehearſing the miſchief, and the remedy muſt be applicable thereunto, and the laſt branch of this act doth make this point clear.

As information ſhall be made, &c. *of any perſon to be ſuſpected*] Hereby it appeareth, that a bare information without ſhewing a juſt cauſe of ſuſpicion at the leaſt, is not ſufficient to ground a warrant according to this act; for the words are, *of any perſon to be ſuſpected.* And this act is general, and extends to all perſons of what eſtate or degree ſoever, and as well to women as to men; for the words are, *if any perſon:* And *generalia verba ſunt generaliter intelligenda.* And it is neceſſary for him that taketh the information, to take it in writing, becauſe it is the ground of his warrant.

Of any unlawful huntings in any foreſt, park, or warren] This act doth not extend to any chaſe of the king, or of any other perſon; neither doth it extend to any foreſts, parks, or warrens in uſe or reputation, and which are not foreſts, parks, or warrens in law.

To any of the king's counſel] This is underſtood of the king's privy council; and any one will ſerve, but he muſt be dwelling in the county where ſuch offence is committed.

Or to any the juſtices of the king's peace, &c.] And likewiſe, any one juſtice of the peace will ſerve.

Warrant] This warrant ought to be in writing, under the ſeal of him that maketh it.

Before the maker of the ſame warrant, or any other, &c.] So that the officer may carry the party arreſted before any privy counſellor, or juſtice of peace within that county, and to that effect muſt the warrant be made.

By his diſcretion have power to examine him or them ſo brought of the ſaid hunting, and of the doers in that behalf] So that the examination muſt conſiſt of two parts. Firſt, of the hunting by the party himſelf. Secondly, of other doers in that behalf.

And if the ſaid perſon wilfully conceal the ſaid hunting, or any perſon with him defective *therein*] This branch being in the disjunctive, if he conceal either his own offence, or of the other miſdoers with him therein, the letter of this act is, that it is felony; but, by conſtruction upon the whole ſtatute, it is no felony: and a hunting without killing any game, is within the danger of this ſtatute.

And if he confeſs the truth, and all that he ſhall be examined of, and knoweth in that behalf] That is, of his own guilt, and of other miſdoers with him, then this act makes it no felony, but treſpaſs finable, as it was before: but it muſt be a wilful concealment; therefore, if he knew not the names of the other miſdoers, or knew not whether they were there or no, it is no offence, for the concealment muſt be wilful. And ſeeing there is no time limited by this act, and the concealment ought to be wilful, it is reaſonable that the information ſhould be made in convenient time after the fact done.

And if any reſcous or diſobeiſance be made to any perſon having authority to do execution of juſtice by any ſuch warrant by any perſon, the which ſo ſhould be arreſted, ſo that execution of the ſame warrant be not had, that then the ſame reſcous and diſobeiſance be felony.] Hence, it is to be obſerved, that the hunting being as yet no felony, the reſcous could not be felony, if this branch had not been. Herein two things are to be conſidered; firſt, that it extendeth not but to the reſcous, or diſobeiſance, that is committed by the party himſelf that is to be arreſted, and not to any other. Secondly, that if the party reſcue himſelf, yet if he be purſued and taken, ſo as execution of the warrant be had, it is no felony, as it is manifeſt by the letter of this branch.

And over this be it enacted, &c. *that if any perſon or perſons hereafter to be convict of any ſuch huntings with painted faces, viſors, or otherwiſe diſguiſed*, &c. *or of unlawful hunting in the night, that then the ſame perſon or perſons ſo convict, to have like punition, as he or they ſhould have, if they were convict of felony.*]

Gerard the queen's attorney general (who was a grave and reverend man) ſaid openly in the *King*'s *Bench*, that it had been reſolved by the juſtices upon this ſtatute, that if a man in the night, or by day, with painted face do hunt, *&c.* and being examined according to the act and concealeth it, this is (upon the conſtruction of the whole act) no felony; for the firſt clauſe concerning concealment, and this clauſe which now we handle, muſt be coupled or joined by conſtruction together, *viz.* If any perſon be convict of ſuch hunting with painted face, or of unlawful hunting in the night, this conviction muſt be upon not guilty pleaded, which the juſtices expounded to be the concealment intended in the firſt branch; for they held it ought to be a judicial concealment, and not an extrajudicial concealment, before one of the privy council, or a juſtice of peace, which may lie in averment; ſo that before it be felony, he muſt be convicted of ſuch hunting, *&c.* upon not guilty pleaded firſt: and after ſuch conviction, then muſt he be indicted again, *ſuper* *tota materia*, that he *felonicè* did conceal, *&c.* againſt the form of the ſtatute. And if the offender upon the firſt indictment confeſs the indictment, then it is ſuch a judicial confeſſion as this act intendeth, and no felony within this ſtatute. And this we heard the attorney report, and then obſerved it, which concurring with our own opinion, we thought good to publiſh, and the rather, for that in Maſter *Lambard*'s book of Juſtices of Peace, amongſt his precedents of indictments, is an erroneous precedent of an indictment of felony for the concealment, *&c.* upon examination before juſtices of peace. *Thus far lord* Coke.

But lord *Hale* ſays, that this ſeems a difficult expoſition; for upon his arraignment for the hunting, he only anſwers to that indictment, and is not examined touching others; and beſides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convict of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how ſhall there be evidence to convict him of the concealment? 1 *Hale's H.* 659.

Stat. 3 *Jac.* 1. *cap.* 13.

The penalty for entering a warren, or for hunting of conies.

Sect. 2. IF any perſon ſhall unlawfully enter into any park, or grounds incloſed with wall, pale or hedge, and uſed for the keeping of conies, and unlawfully hunt, chaſe, take, or ſlay any conies within ſuch park, or grounds, againſt the will of the owners, and thereof ſhall be convicted at the ſuit of the king, or the party, he ſhall ſuffer impriſonment of three months, and ſhall pay to the party treble damages and coſts, to be aſſeſſed by the juſtices, before whom he ſhall be convicted, and ſhall find ſureties for his good abearing for ſeven years, or elſe ſhall remain in priſon, until he finds ſureties during the ſaid ſeven years.

What juſtices may hear and determine the offences aforeſaid.

Sect. 3. The juſtices of *oyer* and *terminer*, juſtices of aſſize, juſtices of the peace and gaol-delivery in their ſeſſions, ſhall have power to inquire, hear, and determine the ſaid offences by examination of the offenders, and to award proceſs, as well upon indictments taken before them, as by bill of complaint, or other action.

The remedy of the party grieved.

Sect. 4. It ſhall be lawful to the party grieved to take his further remedy againſt ſuch offenders for his damages, and to recover his treble value, as well before the juſtices of *oyer* and *terminer*, juſtices of aſſize, and juſtices of peace and gaol-delivery in their ſeſſions, or in the courts at *Weſtminſter*; and upon ſatisfaction of the treble damages to the party, or upon the acknowledgment thereof before the juſtices, it ſhall be at the liberty of the party grieved to releaſe the ſuretiſhip of the good behaviour at any time within the ſeven years.

In what caſe the ſuretiſhip of the good behaviour may be releaſed by the party grieved.

The penalty for ſhooting with gun or bow at conies, or for keeping of engines.

Sect. 5. If any perſon not having hereditaments of the yearly value of forty pounds, or not worth in goods two hundred pounds, ſhall uſe any gun, bow, or croſs-bow, to kill deer or conies, or ſhall keep any buckſtall or engine, hays, nets, ferrets, or coney-dogs, except ſuch as ſhall have grounds incloſed uſed for the keeping of deer or conies, the increaſing of which conies ſhall amount to the yearly value of forty ſhillings to be letten, or keepers or warreners in their grounds; any perſon having hereditaments of the yearly value of one hundred pounds in fee, or for life in his own right, or in right of his wife, may take from the perſon of ſuch malefactor, and to his own uſe keep ſuch guns, &c.

In what caſe the juſtices may diſcharge the ſurety of good abearing.

Sect. 6. If any perſon ſhall be bound for his good abearing according to this act, and the ſame party ſhall within the ſeven years come before the juſtices of peace of the county where the offence was committed, in quarter-ſeſſions, and there confeſs his offence, that he is ſorry therefore, and ſatisfy the party grieved according to this act, the juſtices ſhall have power within the ſeven years to diſcharge the recognizance.

Proviſo.

Sect. 7. Provided, that the act do not extend to any park or incloſed ground hereafter to be made for deer or conies, without licence of the king.

Stat. 22 & 23 *Car.* 2. *c.* 25.

No perſon ſhall kill conies in a warren not incloſed.

Sect. 4. AND foraſmuch as divers warrens and grounds not incloſed, are uſed for the breeding and keeping of conies, in ſeveral parts of this kingdom, and that ſundry diſſolute and diſorderly perſons have been much encouraged to kill and deſtroy the conies in ſuch warrens and grounds not incloſed, in the night time, for that the ſame is not prohibited or puniſhable by the ſtatutes in that behalf made and provided, which extend only to the ſtealing and killing of conies in warrens or grounds incloſed: for remedy thereof, be it enacted and declared, That if any perſon or perſons ſhall at any time enter wrongfully into any warren or ground lawfully uſed or kept for the breeding or keeping of conies (although the ſame be not incloſed) and there ſhall chaſe, take, or kill any conies againſt the will of the owner or occupier thereof, not having lawful title or authority ſo to do, and ſhall be thereof lawfully convicted in manner hereafter following, the parties ſo offending ſhall yield to the party grieved treble damages and coſts, and ſuffer impriſonment by the ſpace of three months, and after, till they ſhall find ſureties for their good abearing.

Forfeiture.

No perſon ſhall in the night kill any conies on the borders of any warren, except the owner of the ground.

Sect. 5. And foraſmuch as divers idle and diſorderly perſons living near unto warrens have of late time uſed to kill and take the conies upon the borders of the ſame, and under colour thereof do oft-time enter into the ſaid warrens, and there take and kill conies in the night-time, when they cannot eaſily be diſcovered; it is further provided and enacted, That no perſon or perſons ſhall at any time hereafter kill or take in the night-time any conies upon the borders of any warrens, or other grounds lawfully uſed for the breeding or keeping of conies; excepting only ſuch perſon or perſons as ſhall be owner of the ſoil, or lawful occupier or poſſeſſor of the ground, or any perſon or perſons employed by him, her, or them, whereupon ſuch conies ſhall be ſo killed or taken; upon pain that every perſon ſo offending, and being thereof lawfully convicted in manner hereafter following, ſhall give the party or parties injured ſuch recompence or ſatisfaction for his or their damages,

The penalty.

damages, and within ſuch time as ſhall be appointed by the juſtice before whom ſuch offender ſhall be convicted, and over and above pay down preſently unto the overſeers, for the uſe of the poor of the pariſh where ſuch offence ſhall be committed, ſuch ſum of money, not exceeding ten ſhillings, as the ſaid juſtice ſhall think meet: and if ſuch offender or offenders do not make recompence or ſatisfaction to the ſaid party or perſons injured, and alſo pay the ſaid ſum to the poor, in manner and form aforeſaid, then the ſaid juſtice ſhall commit the ſaid offender or offenders to the houſe of correction for ſuch time as the ſaid juſtice ſhall think fit, not exceeding one month.

Impriſonment.

No perſon ſhall kill or ſet ſnares for hares, &c.

Sect. 6. And whereas divers idle and diſorderly perſons have of late time taken up a practice to take and kill hares and conies with ſnares, harepipes, and other engines, in or near woods, warrens, or other places; it is hereby further enacted and declared by the authority aforeſaid, That if any perſon or perſons from and after the firſt day of *May*, which ſhall be in the year of our Lord God one thouſand ſix hundred ſeventy and one, ſhall be found or apprehended ſetting or uſing any ſnares, harepipes, or other like engines, and ſhall be thereof convicted in manner following; the perſon or perſons ſo offending ſhall be liable to the penalties in the immediate foregoing clauſe of this act, in manner as aforeſaid.

The penalty.

By ſtatute 9 *Geo.* 1. *c.* 22. commonly called *The Black Act*, If any perſon being armed and diſguiſed, ſhall appear in any warren or place where conies are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for ſuch offence, or procure any perſon to join him therein, he ſhall be guilty of felony without benefit of clergy.

[Adjudged Caſes concerning Conies.]

ACTION upon the caſe. Whereas the plaintiff was ſeiſed of certain lands in fee, and the defendant was ſeiſed of other lands adjoining, the defendant had made two coney-boroughs in his lands adjoining; and had put conies in them, which increaſed to a great number, and went into the plaintiff's land, and deſtroyed his corn, and made it barren, whereby he loſt the profits of his land; and therefore brought the action. The defendant pleads, that the plaintiff's land was late parcel of the manor of *D.* and that queen *Mary*, being ſeiſed of that manor, granted it to Sir *Will. Peto*, and granted unto him to have a warren in the ſaid manor, and that the plaintiff's land was conveyed unto him; and that Sir *W. P.* bargained, and ſold the manor to the defendant, and all warrens, &c. thereto appertaining, or accepted, and reputed as part of that manor; whereby he juſtifies, &c. and it was hereupon demurred. And all the juſtices, without argument, reſolved, that the plea was ill; for he hath ſhewn a warren in groſs in the patentee, which is not conveyed unto him by the bargain, and ſale; for a warren is not parcel, nor any member of a manor, but it may be appertaining, but that is by

Action lies not for damages done by conies, becauſe *feræ naturæ*, and none can have them in his own land but by patent or preſcription; and none can erect a dove-houſe, but a lord of the manor, otherwiſe puniſhable in a leet; but an action lies not for a private man.

by preſcription. But, whether an action upon the caſe lay upon this matter, was the only queſtion. *Anderſon:* The action lies not. For, although one hath conies in his land, he hath not any property in them; becauſe they be *feræ naturæ.* And to have an action againſt one for damage done by ſavage and wild creatures, wherein he hath not any intereſt, and they cannot be known, whether they come out of his land, is unreaſonable. And he, who hath the damage thereby, may well kill them, and they may be ſaid to be his conies, when they are upon his lands. And, if other men have other warrens adjoining, againſt whom ſhall the action be brought? Truly againſt none of them. *Walmſly* agreed; for the property of the conies is not in any, nor can any man ſo keep them, but that they will break out of themſelves; which is the reaſon, that none can have them in his own land, unleſs by grant from the king, or by preſcription: if otherwiſe, he is puniſhable in a *quo warranto.* For the queen hath the royalty in ſuch things, whereof none can have any property. And this caſe is not like to the caſes put on the other ſide, of erecting a lime-kiln, dye-houſe, or the like; for there the annoyance is by the act of the parties, who make them; but it is not ſo here, for the conies of themſelves went into the plaintiff's land, and he might take them, when they came upon his land, and make profit of them. And none may erect a dove-houſe, but he who is lord of a manor; and, if any other private man erects it, he is puniſhable in the leet, as a common nuſance. But no action upon the caſe lies by any private man againſt him who erects it. *Quod* Anderſon, *&* Beamond *conceſſerunt*. And they ſaid, they had ſeen it to be inquired of before the lord *Dyer* at the aſſizes, as a nuſance. And this caſe is not like to other caſes, which were put of *nuſances:* for there the tort is by the party himſelf, who doth it; but here the putting the conies into his own land is not a tort. And, if there be any wrong, it is by the conies themſelves, who are *feræ naturæ*; wherefore it is not reaſonable to puniſh any other. And *Beamond* agreed with the other juſtices *in omnibus*; wherefore afterward, by the aſſent of *Owen* alſo, it was adjudged for the defendant. 1 *Cro.* 547. *Hil.* 39 *Eliz. Bowlſton* v. *Hardy*.

A commoner hath nothing to do with the common, but to put in his cattle, and may not meddle with any thing of the lord's there; and as the lord may have great beaſts there, ſo he may have beaſts of warren, and the commoner cannot deſtroy them.

Treſpaſs: *Clauſum fregit* called the heath, *apud* Layton Buſſard, the 11th *Decemb.* 4 *Jac. nec non* the ſame day *liberam warrenam* of the plaintiff *apud* Layton *prædict. intravit*, and took, killed, and carried away conies. The defendant pleads to all the treſpaſs, beſides the entry into the cloſe called the heath, *Not guilty*; *quoad* that, he juſtifies; for that he was ſeiſed in fee of a meſſuage and land, and had common by preſcription appertaining thereto, in the place where, *&c.* and that he was ready to uſe his common, and many conies being there damage feaſant, and ſpoiling the graſs, he entered to chaſe them out, leſt they ſhould increaſe, *&c.* Whereupon the plaintiff demurred: and after argument, the court adjudged that the plea was not good; for a commoner hath nothing to do with the land, but to put in his cattle, and may not meddle with any thing of the lord's there; and as the lord may have great beaſts there, ſo he may have beaſts of warren, and the commoner cannot deſtroy them. *F. Nat. Br.* 121. And if the lord by reaſon of them ſhould ſurcharge the common, he ought to have his remedy by aſſize, or action upon the caſe; but he may not kill the conies, no more than he may kill any other beaſt of the lord's: and ſo long as conies are in the lord's own land, the lord hath property in them, and may ſay *cuniculos ſuos*; but when they go out, he hath no longer property in them. 22 *H.* 6. 59. 10 *Hen.* 6. 13. 46 *Ed.* 3. 2. 3 *Hen.* 6. 55. And therefore they being in the lord's land, the commoner may not meddle with them, nor ought he to come there but to uſe his common: then when he ſhews, that his intent was to enter to chaſe the conies, that entry is tortious; wherefore it was adjudged for the plaintiff. Note, at the firſt motion, the court was of opinion againſt the plaintiff; that a commoner might deſtroy conies, for they are *feræ naturæ:* but afterward upon better conſideration, and upon a view of a precedent between *Bellew* and *Langdon*, *Paſch.* 44 *Eliz.* in this court, and for the reaſons before recited, all the juſtices upon the ſecond motion adjudged for the plaintiff: and it was reſolved accordingly. 2 *Cro.* 195. *Paſch.* 5 *Jac.* 1. *Hadeſdon* v. *Gryſſel.*

Action lies not for a commoner againſt his lord or any other who erects a warren in the land adjoining, and with conies eat up the common.

Error of a judgment in the common bench, in an action upon the caſe. Whereas the plaintiff had declared, that he was a copyholder of the manor of *Lull*, whereof a great waſte, called *Lull Waſte*, was parcel, and the copyholders of the manor having common there, that the defendant being ſeiſed of parcel of a wood called *Lull Wood*, adjoining to the ſaid common, maintained conies in the ſaid wood, which run out thereof into the common and eat up the common; whereupon the action was brought. The defendant traverſed the preſcription to the common, and it was found againſt him, and judgment given. And now *Germin* for the plaintiff in the writ of error moved, that this declaration was not maintainable; becauſe none can ſay, when conies are upon the common, whoſe conies they are: And they cannot be ſaid to be the defendant's conies more than any others, for being out of his ſoil he hath no intereſt in them more than any other, they being *feræ naturæ*; ſo as he hath not any property in them until he takes them: And therefore *Fitz. N. B.* 87. and 89. ſaith, they ſhall not be ſaid *cuniculos ſuos*, nor *piſces ſuos* in common rivers: And although the commoner hath loſs, yet it is without injury by the defendant. And *Grimſton* likewiſe for the plaintiff, urged further, that if this action ſhould be maintainable, there would be multiplicity of ſuits; for every commoner would have an action, which ought not to be ſuffered: And here is no more cauſe of action than when one ſuffers his doves to fly into the corn adjoining;

for which clearly no action lies: for it cannot be known whoſe doves they be, and the commoner is not at any miſchief, for he may kill them if he can: And for that point cited, 5 *Co. fo.* 104. *Boraſton*'s caſe. And ſo held all the juſtices here, beſides *Barkeley*, who doubted thereof; wherefore rule was given, that the ſaid judgment ſhould be reverſed, if upon ſuch a day, the next term, other cauſe was not ſhewn, *&c.* which was done to the intent there might be conference with the juſtices of the common bench, to know if it had been moved in the common bench, or if it had paſſed *ſub ſilentio*, being after verdict: And the ſame day I conferred with *Hutton*, *Vernon* and *Crawley*, judges of the common bench, if they knew any ſuch caſe had been moved in their court, and they all ſaid, they did not remember any ſuch to be there moved, but that it paſſed *ſub ſilentio:* And they all held, that an action upon the caſe lies not for a commoner, but he may kill them; for none hath any property in them; wherefore the judgment was afterward reverſed. 3 *Cro.* 387. *Hil.* 8 *Car.* 1. *Hinſley* v. *Wilkinſon.*

Commoner may kill conies.

Conies deſtroying the land adjoining may be killed by the owner of ſuch land.

Between *Boulſton* and *Hardy* it was adjudged in the common pleas, that if a man makes coney-boroughs in his own land, which increaſe in ſo great numbers that they deſtroy his neighbour's land next adjoining, that his neighbour cannot have an action on the caſe againſt him who makes the ſaid coney-burrows; for ſo ſoon as the conies come in his neighbour's land he may kill them, for they are *feræ naturæ*, and he who makes the coneyney-burrows has no property in them, and he ſhall not be puniſhed for the damage which the conies do wherein he has no property, and which the other may lawfully kill. And it was reſolved in this caſe, that none may new erect a dove-cote but the lord of a manor, and if any do it, he may be puniſhed in the leet, but no action on the caſe lies by any particular man, for the infiniteneſs of actions that may be brought: And of ſuch opinion, as to the erection of a dove-cote was Sir *Roger Manwood* chief baron, and the barons of the exchequer in the exchequer chamber. 5 *Co. Rep.* 104. *b. Boulſton*'s caſe.

A commoner cannot kill the conies which are upon the common.

An action of treſpaſs was brought againſt *John Coney*, for digging of the plaintiff's cloſe, and killing of 18 conies there: The defendant pleaded as to all the treſpaſs, but killing of two conies, not guilty; and as to them he ſaid, that the place where, &c. the treſpaſs is ſuppoſed, is a heath in which he hath common of paſture, and that he found them eating of the graſs, and that he killed them and carried them away, as it was lawful for him to do, &c. *Cook*, the point is, whether a commoner having common of paſture may kill the conies which are upon the ground; and he ſaid, he might not. And firſt he ſaid, it is to be conſidered, what intereſt he who hath the freehold, may have in ſuch things as are *feræ naturæ*. Secondly, what authority a commoner hath in the ground in which he hath common: To the firſt, he ſaid, that although ſuch beaſts are *feræ naturæ*, yet they are reduced to ſuch property when they are in my ground, by reaſon of my poſſeſſion, which I then have in them, that I may have an action of treſpaſs againſt him who takes them, as 42 *E.* 3. 24. If one have deer in his park, and another taketh them away, he may have an action of treſpaſs for the taking. 12 *Hen.* 8. If a foreſter follow a buck, which is chaſed out of the park or foreſt, although he who hunteth him, killeth him in his own ground, yet the foreſter or keeper may enter into his ground, and retake the deer, for the property and poſſeſſion which he hath in it by the purſuit. 7 *Hen.* 6. 38. It is holden, that if a a wild beaſt go out of the park, then the owner of the ground hath loſt the property in it. *Brook* thereupon collects, that he had a property in it whilſt it was in his park. 18 *Ed.* 4. 14. It is doubted whether a man can have property in things which are *feræ naturæ*; but 10 *Hen.* 7. 6. it is holden that an account lieth for things *feræ naturæ*. *Vide* 14 *Hen.* 8. 1. The biſhop of *London*'s caſe, and 22 *Hen.* 6. 59. as long as they are in his ground, they are in his poſſeſſion, and he ſhall have an action of treſpaſs for the taking of them, and the writ ſhall be *damas ſuas*, by *Newton.* And in the *Regiſter* 102. It is *quare ducent's cuniculos ſuos precii, &c. cepit.* But it is ſaid, that he hath common there: What then? yet he cannot meddle with the wood, ſand, graſs, but by taking of the ſame with the mouths of his cattle: If he who hath the freehold bring an action againſt the commoner for entring into his land; if he plead, not guilty, he cannot give in evidence, that he hath common there. 22 *Aſſ.* A commoner cannot put in cattle to agiſt: So is 12 *Hen.* 8. and of late it was holden in this court, that where the commoners did preſcribe, that the lord had uſed to put but ſo many of his cattle upon the lands; that it was a void preſcription. *Godfrey* contrary. That it is lawful for the commoner to kill them: And he agreed the caſes which were put by *Cook.* And he ſaid, that the owner of the ground had not the *very* property, but a kind of property in them. 3 *Hen.* 6. and *F. N. B.* If the writ of treſpaſs be, *quare cuniculos ſuos, &c.* the writ ſhall abate; and yet he hath a property in them, or rather a poſſeſſion of them. I grant, that againſt a ſtranger he might have this action of treſpaſs, but not againſt the commoner: for he hath a wrong done unto him, by their being upon the land, and therefore he may kill them, although he may not meddle with the land, becauſe he hath not an intereſt in it; and yet he may meddle with the profit of it: as 15 *Hen.* 7. A commoner may diſtrain damage feaſant. 43 *E.* 3. Conies dig the ground and eat the graſs of the commoner, *&c.* I grant, that it is not lawful for the tenant for life to kill the conies of him who hath a free warren in the ground. For if a man bring an action of treſpaſs, *quare warrenam ſuam intravit et cuniculos ſuos cepit, &c.* it is no plea, that it is his freehold. *L.* 5 *E.* 4. In treſpaſs *quare clauſum fregit et cuniculos cepit*, the defendant ſaid, that the plaintiff made a leaſe at will unto ſuch a man, of the land; and he as his ſervant did kill the conies, and it was holden no plea, and yet it is there ſaid, that by the grant of the land the conies do not paſs; but the reaſon (as I conceive) is, becauſe it tends to his damage, and therefore that he may kill them. And ſo in this caſe, 2 *Hen.* 7. and 4 *E.* 4. If I have common of paſture in land, and the tenant plougheth the land, I ſhall have my action upon the caſe in the nature of a *quod permittat.* 9 *E.* 4. If one hath land adjoining to my land, and levy a nuſance, I may enter upon his land and abate the nuſance. So if a man take my goods and carry them into his own land, I may enter thereupon and retake my goods. So if a tenant of the freehold plough the land, and ſow the ſame with corn, the commoner may put in his cattle, and eat the corn growing upon the land, and may juſtify the ſame, becauſe the wrong firſt begins by the tenant; ſo if a man do falſely impriſon me, and put me in his houſe, I may break his houſe to get forth. 21 *H.* 6. In treſpaſs, all the inhabitants of ſuch a town do preſcribe to have common in ſuch a field every year after harveſt: And one froward fellow amongſt the reſt will not gather in his corn within convenient time, if the townſmen put in their cattle, and they eat the corn, he hath no remedy for it; and he aſked what remedy the commoner ſhould have for the eating of the graſs, which his cattle is to have, if he ſhould not kill the conies? He cannot take them damage feaſant, for he cannot impound them; nor doth a replevin lie of them. 19 *E.* 3. and *F. N. B.* If the lord ſurcharge the common, the commoner may have an action againſt him: but in this caſe, he can have no action. Gaudy, chief juſtice, He cannot kill the conies, becauſe he may have other remedy. *Suit*, juſtice, A commoner cannot take or diſtrain the cattle of a freeholder damage feaſant; and therefore he cannot kill or deſtroy the conies, and he hath a remedy; for he may have an action upon the caſe, or an aſſiſe againſt him for putting in of the conies, if he do not leave ſufficient common for the commoner. Judgment was afterwards given for the plaintiff. *Hil.* 29 *Eliz.* *Godbolt* 122. *Coney*'s caſe.

Killing conies not juſtifiable.

Treſpaſs for breaking his cloſe, and killing there 200 conies. The defendant juſtifies; for that he there had common appurtenant to ſuch an houſe by preſcription. And becauſe the conies were there damage feaſant, he killed them: And it was thereupon demurred. *Godfrey* for the plaintiff, that it is not any plea. For the owner of the ſoil hath intereſt in them againſt all eſtrangers, and the commoner hath nothing to do, but to take his common with the feeding of his cattle there, and he ought not to deſtroy the profit which the owner hath therein. And as the owner of the ſoil may have other cattle there, ſo may he have conies, and may make fiſh-ponds, and the commoner cannot deſtroy them. 22 *Hen.* 6. 59. 3 *H.* 6. 55. And for this point in queſtion, it was adjudged 29 *Eliz.* betwixt *Old* and *Coney* in this court: That a commoner cannot juſtify the killing of conies there, &c. *Wyat è contra*, and that it is a good plea. For the commoner hath no other means to help himſelf but by killing them, for they be harmful to his common, and dig, and undermine the ſoil, and take from him all the benefit of his common, if he ſuffer them to increaſe; and they are ſuch creatures whereof no man hath a property; and being eſteemed as harmful beaſts, the commoner may well kill them, as he may kill foxes, or other vermin. Wherefore, *&c.* But all the court *(Popham abſente)* reſolved, that the plea was not good; for the coney is a beaſt of warren, and profitable, as deer are, and are not to be compared to vermine. And therefore the keeping of them by the owner of the soil is lawful, and the killing them unlawful, and not juſtifiable. And it was adjudged for the plaintiff. *Paſch.* 44 *Eliz.* 1 *Cro.* 876. *Bellew* v. *Langdon.*

A man cannot preſcribe to hunt and kill conies, &c.

In an action of treſpaſs for 30 hares, and 300 conies hunted in his warren, taken and carried away, which treſpaſs was laid with a *continuando*, from ſuch a time till ſuch a time: The defendant juſtified, becauſe he had common in the place where, *&c.* to a meſſuage, ſix yard-lands for 240 ſheep, and that he and all thoſe whoſe eſtate he hath, time out of mind, have uſed at ſuch time as the common was ſurcharged with conies, to hunt them, kill and carry them away, as to his meſſuage appertaining: Upon which the plaintiff did demur in law, becauſe a man cannot make ſuch a preſcription in the free-warren, and freehold of another man: And ſecondly, becauſe a man cannot ſo preſcribe to hunt, kill, and carry away his conies, as pertaining to his meſſuage: But a man may preſcribe to have ſo many conies to ſpend in his houſe: And for theſe cauſes in the principal caſe, the preſcription was holden for a void preſcription; and judgment was given for the plaintiff. *Hil.* 9 *Jac.* *Samford* and *Haval's* caſe, *Godbolt* 184.

Lord of the ſoil may make coney-burrows, &c.

Caſe, *&c.* wherein the plaintiff made a title under coparceners, and preſcribed in them to have a right of common in *Hartſhorn*, as appurtenant to his meſſuage there; and that the defendant had made a warren in the common and *coney-burrows*, and put in conies, *&c.* by reaſon whereof he could not enjoy his common ſo beneficially as before; the defendant preſcribed to have a free warren within the manor of *H.* and ſo juſtified the making coney-burrows, and putting in conies, *&c.* and averred, that the plaintiff had ſufficient common; the plaintiff replied and maintained his declaration, and traverſed the ſufficiency of the common, and the defendant's preſcription to a free warren; and upon a demurrer to this replication it was objected againſt the plea, that the lord of the ſoil could not make coney-burrows, and put in conies there to the prejudice of the defendant, who hath right of common, ſo that he could not enjoy the benefit thereof; but the plaintiff had judgment, by which it appears the lord might do it; but that if the conies multiply ſo faſt, that the plaintiff could not enjoy his common, he might have an action on the caſe againſt the lord. 1 *Lutw.* 107. *Haſſard* againſt *Cantrel.*

Treſpaſs for killing cuniculos ſuos in his cloſe, well.

Treſpaſs *quare clauſum ſuum fregit et centum cuniculos ſuos adtunc et ibidem inventos venatus fuit, occidit, cepit et aſportavit.* Upon not guilty pleaded, verdict for the plaintiff and intire damages. *Gould* ſerjeant moved in arreſt of judgment, that conies are *feræ naturæ*, and therefore there is no property in them in any; therefore ſince the plaintiff has laid property in them by the word [*ſuos*] it is ill, and no damages ought to have been given for them. But if the action had been for having hunted *in warrenna ſua*, and killed *cuniculos ſuos* there found, it had been good, for then he would have had a privileged property in them. The ſame law for fiſh taken *in ſeparali piſcaria. Fitz. N. Br.* 87. 1 *Cro.* 553. *Greenhill* v. *Child. March* 48. *Jones* 440. But generally there is no property in things which are *feræ naturæ*, and therefore trover does not lie for a hawk, without alledging that he was reclaimed; and in ſuch an action it was adjudged againſt the plaintiff, though it was alledged in the declaration, that he was poſſeſſed of the hawk as of his proper goods. *Dyer* 306. *b. pl.* 66. *Sed non allocatur.* For *per Holt* chief juſtice, a warren is a privilege, to uſe his land to ſuch a purpoſe; and a man may have warren in his own land, and he may alien the land, and retain the privilege of warren. But this gives no greater property in the conies to the warrener, for the property ariſes to the party from the poſſeſſion; and therefore if a man keeps conies in his cloſe (as he may) he has a poſſeſſory property in them, ſo long as they abide there; but if they run into the land of his neighbour, he may kill them, for then he has the poſſeſſory property. If *A.* ſtarts a hare in the ground of *B.* and hunts it and kills it there, the property continues all the while in *B.* But if *A.* ſtarts a hare in the ground of *B.* and hunts it into the ground of *C.* and kills it there, the property is in *A.* the hunter; but *A.* is liable to an action of treſpaſs for hunting in the grounds as well of *B.* as of *C.* But if *A.* ſtarts a hare, *&c.* in a foreſt or warren of *B.* and hunts it into the ground of *C.* and there kills it, the property remains all the while in *B.* the proprietor of the warren, becauſe the privilege continues. And theſe diſtinctions *Holt* chief juſtice took upon the authority of 12 *Hen.* 8. 9. And by the whole court judgment was given for the plaintiff, becauſe he had a property by the poſſeſſion. And *Holt* cited 1 *Ventr.* 122. *Pollexfen* v. *Aſhford*, as a caſe in point, where it is ſaid, that it would be good upon a demurrer. See *Reg.* 93. *b.* *Brownl. Decl.* 167. *Raſt. Ent.* 450. *b.* *Theloal, Dig.* 196. 22 *Hen.* 6. 59. *b.* And *Holt* ſaid, that the reaſon of the caſe in *Dyer* 306. *b.* was, that he admitted himſelf out of poſſeſſion, and therefore the action could not lie, unleſs the hawk was reclaimed. *Mich.* 9 *Will.* 3. *Sutton* v. *Moody*, 1 Lord *Raym.* 250.

Juſtices of peace cannot aſſeſs a fine certain for killing of rabbits in a private warren.

Yaites was convicted of killing rabbits in a private warren, by inquiſition taken before a juſtice of peace, and was fined 20*s.* a rabbit. And Mr. *Northey* moved to quaſh the inquiſition, becauſe the juſtices of peace have no authority to ſet a fine upon a man for ſuch offence. For the ſtatute 22 & 23 *Car.* 2. *cap.* 25. gives treble coſts and damages, but no fine. And the ſtatute 4 & 5 *Will.* & *Mar.* *cap.* 23. extends only to game, which cannot be extended to rabbits kept in a private warren. And of this opinion was the whole court; and therefore the inquiſition was quaſhed. *Hil.* 8 & 9 *Will.* 3. *Rex* v. *Yaites*, 1 L. *Raym.* 151.

Action lies not for ſtopping coney-burrows.

Moyle brought an action of waſte againſt *Mayle*, and declared that he had leaſed to him a manor and a warren, and that he had deſtroyed a coney-burrow and ſubverted it, and aſſigned other waſtes in cutting down certain thorns. *Williams:* The action of waſte will well lie, and ſaid that a warren conſiſted of two things, of a place of game, and of liberty, and to prove that waſte did lie for a liberty, he cited the ſtatute of *Magna Charta*, *cap.* 5. in which a warren is intended; alſo the ſtatute of *Marlebridge*, *cap.* 24. and the ſtatute *Articuli Super Chartas*, *cap.* 18. by which ſtatutes it is evident that waſte does lie for warrens, and a warren is more than a liberty; for a writ lies *quare warrenam ſuam intravit*, and by the 12 *H.* 8. if leſſee of a warren does break the pale, it is waſte; alſo if leſſee of a pigeon-houſe ſtop the holes, ſo that the pigeons cannot build, waſte doth lie, as it hath been adjudged. Alſo if leſſee of a hop-yard ploweth it up, and ſows grain there, it is waſte, as it hath been adjudged. Alſo the breaking a weare is waſte, and ſo of the banks of a fiſh-pond, ſo that the water and fiſh run out: To all which caſes the court agreed, except to the principal. For the court held it was not waſte to deſtroy coney-burrows; for waſte will not lie for conies, becauſe a man hath not inheritance in them, and a man can have no property in them but only poſſeſſion; and although by a ſpecial law, keepers are to preſerve the land they keep, in the ſame plight they found it, yet this does not bind every leſſee of land. *Walmeſly:* The ſubverſion of coney-burrows is not waſte, and it was uſual to have waſte againſt thoſe who made holes in land, but not againſt thoſe who ſtop them up, becauſe thereby the land is better: And it was ſaid, that to dig for ſtones was a waſte, unleſs in an antient quarry, although the leſſee fill it up again. And *Walmſley* ſaid, that in *Lancaſhire* it is waſte to dig marl, unleſs it be employed upon the land: And ſaid it was not waſte to cut thorns, unleſs they be in a wood ſtubbed and digged up by the roots; but if they grow upon the land then they may be ſtubbed, and it is no waſte: But to cut down thorn-trees that have ſtood 60 or 100 years, is waſte. *Owen* 66. *Trin.* 41 *Eliz.* *Moyle* againſt *Mayle.*

A commoner cannot kill conies for treſpaſſing in the common.

Carril v. *Baker*, *Trin.* 11 *Jac.* The plaintiff brought an action wherefore by force and arms he entred into his warren, and digged his land, and chaſed his conies, and took them; the defendant pleads to all except to the entring the warren, chaſing the conies, and digging the land, not guilty, and as to the entring of the warren, chaſing of the conies, and digging the land, he pleads an eſpecial juſtification, to wit, that he had common there time out of mind, and becauſe the plaintiff ſtored the burrows there with conies, and made new holes, by reaſon whereof the defendant's ſheep feeding there, fell into them to their great damage, the defendant did with a ferret chaſe the conies, and ſtopped up the holes with the earth digged out, *&c.* and upon that plea the plaintiff demurred, and *George Crook* was of opinion that it was not a good juſtification, and the queſtion was ſingle, whether a commoner might drive out conies which ſurcharged the land, and he conceived he could not; for the free-hold and poſſeſſion of the land is in the terr-tenant only, and the commoner cannot intermeddle with it; for a commoner hath only the graſs of the land, and not abſolute neither, to do with it what he pleaſes, but only to take it with the mouths of his cattle, and for this ſee 12 *Hen.* 8. 2. *a.* and 27 *Hen.* 6. 10. and 13 *Hen.* 8. 16. The eſplees in a *quod permittat* is alleged in taking the graſs with the mouths of his beaſts; and for that ſee 22 *Aſſiz.* 48. 10 *E.* 4. 4. and 46 *E.* 3. 23. If a ſtranger put in his cattle, the commoner cannot have an action of treſpaſs; and 13 *Hen.* 8. 15. ruled that if a commoner dig the land to make a trench, he is a treſpaſſer, but he may drive out or diſtrain for doing damage; and 15 *Hen.* 7. 12. 13 *Hen.* 7. 13. and 12 *Hen.* 8. 2. *a.* becauſe after a manner he hath intereſt in the graſs, which is ſpoiled and conſumed by the cattle of the ſtranger; but although he may drive out and diſtrain the cattle of a ſtranger, yet he cannot meddle with the lord's cattle, or the terr-tenant's, although there be more than reaſonable, as in *Fitzherbert's Nat. B.* 125. *D.* and 8 *E.* 3. 30. if the lord ſurcharge the common, the commoner may have an aſſize againſt the lord; but if he be a copyholder, he ſhall have action of the caſe, 9 *Rep.* 112. but the lord may diſtrain, *H.* 9 *Jac.* king's bench, a preſcription for a commoner to kill conies of the lord's is not good, and he cited *Paſch.* 43 *Eliz.* king's bench, *rotulo* 234. *Belly* and *Langhorn*'s caſe. But the commoner, although tenant of the land, cannot kill the conies with his ferrets; for a free warren in ſuch a precinct is a charge upon the land, in what hands ſoever it comes; but if he hath a warren adjoining, and the conies come into the lands of another, out of the precinct, then he may kill the conies, and he cited *Boſler*'s and *Hardie*'s caſe in the common pleas, and for an expreſs authority he cited *Old* and *Conie*'s caſe, *Hil.* 29 *Eliz.* And Sir *Robert Fitchman* was againſt it, and he agreed he could not kill the conies; but as to the digging he took this difference; If a commoner makes any thing *de novo* in the land, he is a treſpaſſer, as it is adjudged in the caſe of a trench before, and the like; but if a commoner amends and reforms a thing abuſed, it is no treſpaſs; and therefore if the land were full of mole-hills he may dig them down, 13 *Hen.* 8. and 42 *Aſſ.* if the lord make a hedge, the commoner may pluck it down, 23 *Ed.* 3. 6. *a.* So if the lord make a pond in the land, the commoners may dig and let the water out; and therefore in holes that were made long, to the hurt and damage of the land, the commoner may put the earth dug out again into its place. Secondly, the defendant hath ſhewed that the coney-holes were made by the plaintiff himſelf, and he ſhall never take advantage of his own wrong: And thirdly, the law will allow every man to preſerve his inheritance, and it cannot be preſerved any other way; for if he ſhould bring an aſſiſe, yet he in that will recover but ſeiſin, and no reformation of the treſpaſs, and wrong done; and the opinion of the court ſeemed to incline for the plaintiff; and *Dodderidge* juſtice ſaid, that a lord or his feoffee may lawfully make new coney-burrows; for they are neceſſary for the preſervation of the conies; but one fault was found by juſtice *Haughton* in the pleading; for the plaintiff declared of entring into his warren. The defendant pleads to all, but the warren digging, and chaſing, not guilty; and as to the digging and chaſing, he juſtifies for common there, but anſwers nothing as to the entring into the warren, neither by confeſſion or traverſe, and therefore all was diſcontinued, as *Herlackenden*'s caſe is, *Co.* 4 *Rep.* and to this the whole court, *Flemming* being abſent, agreed. *Trin.* 11 *Jac.* 1. 1 *Brownlow* 227.

Tithe of conies.

Conies, being *feræ naturæ*, are not tithable of common right. 1 *Roll. Abr.* 635.

But tithes in kind, or a *modus* for them, may be by cuſtom.

In the caſe of *Walton* and *Tryon*, *Mich.* 1751. A bill was brought by the plaintiff (amongſt other things) for the tithe of rabbits,

bits, in a warren called *Aſhurſt's Warren*. And he proved by the former incumbent's book, that the ſame had been compounded for, by payment of 20*s.* in money and four couple of rabbits. For the plaintiff it was argued, that it is a great queſtion, whether this be a predial, mixt, or perſonal tithe. Cuſtomary tithes are generally deemed perſonal tithes; and if ſo, then a payment in lieu of tithes will be good. Rabbits are of that nature that they are difficult for the parſon to get them, the times of taking them uncertain, and therefore a ſmall compoſition probably was taken for them. Suppoſe a compoſition was made for hay, originally at 5*l.* and afterwards a new agreement was made for 4*l.* and one load of hay: This would be good, and an *aſſumpſit* would lie. The parſon's book proves, that ſeveral couples were paid, and money alſo; and that book is always held to be good evidence.——For the defendant, it was anſwered, that this tithe can only depend on a cuſtomary immemorial right; and ſo ought to be laid in the bill. Here it is laid, to the tenth of the rabbits in kind; and the plaintiff demands it as ſuch. But his evidence is directly contrary. For by that he proves a compoſition in lieu of tithes for them. Therefore, as his evidence contradicts his manner of laying his preſcription, he muſt fail in his ſuit. As to the rector's book in this caſe, it is very modern; for it goes no farther back than the year 1728. This indeed may be evidence of payment; but it can never be admitted as an evidence to ſupport the right.——By the lord chancellor *Hardwicke:* The plaintiff by his bill demands tithes in kind. But there is no evidence of that. The evidence offered is, that four couple of rabbits have always been ſent and delivered at the parſon's houſe by the warrener, and 20*s.* a year paid; and ſo proved by the former incumbent's book. And the argument by the plaintiff from this evidence is, that this is a compoſition for tithes in kind; and rightly argued, for the *modus* would be too rank. But the great thing with me is, this 20*s.* a year. For the four couple of rabbits can neither be *modus* nor compoſition. Indeed payment of part of a thing in money, and part in kind, has been held to be good. But I can determine nothing on this queſtion: but it muſt go to be tried as to the cuſtom.

Information in nature of a quo warranto is not to be filed at the inſtance of a private proſecutor, for ſetting up a warren.

Mr. *Fazakerly* moved for leave to file an information in nature of a *quo warranto* againſt Sir *William Lowther*, to ſhew by what authority he had made and ſet up a warren. But it was denied by the court; becauſe it was of a private nature, and therefore proper to be proſecuted only in the name of the attorney general by information, if his majeſty thought fit. And the like motion was denied in the caſe of the Lord *Liſburn*, not long ago; *October* 28, 1725. *Mich.* 12 *Geo.* I. Sir *William Lowther*'s caſe, Lord *Raym.* 1409.

Laws of the Game. (Deer.)

Stat. *Weſtm.* 1. or the ſtatute of *Weſtminſter*, the firſt, made at *Weſtminſter* 25 *April*, *Anno* 3 *E.* 1. and *Anno Dom.* 1275. *chap.* 20. Offences committed in parks and ponds; robbing of tame beaſts in a park.

The puniſhment for offences committed in parks and ponds.

IT is provided alſo for treſpaſſers in parks and ponds, that if any be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs, and ſhall have three years impriſonment, and ſhall after make fine at the king's pleaſure (if he have whereof); and then ſhall find good ſurety, that after he ſhall not commit like treſpaſs; and if he have not whereof to make fine, after three years impriſonment, he ſhall find like ſurety; and if he cannot find like ſurety, he ſhall abjure the realm; and if any being guilty thereof be fugitive, and have no land nor tenement ſufficient, (whereby he may be juſtified) ſo ſoon as the king ſhall find it by enqueſt, he ſhall be proclaimed from county to county; and if he come not, he ſhall be out-lawed. It is provided alſo and agreed, that if none do ſue within a year and a day for the treſpaſs done, the king ſhall have the ſuit; and ſuch as be found guilty thereof by lawful enqueſt, ſhall be puniſhed in like manner in all points as above is ſaid. And if any ſuch treſpaſſer be attainted, that he hath taken tame beaſts, or other thing, in the parks, by manner of robbery, in coming, tarrying, or returning, let the Common Law be executed upon him as upon him that is attainted of open theft and robbery, as well at the ſuit of the king, as of the party.

[*The following commentary upon the foregoing act, is taken from Lord* Coke's *ſecond Inſtitute, p.* 199, 200, 201.]

The cauſe of making this ſtatute was, that at the Common Law, the plaintiff in an action of treſpaſs, ſhould, as in other caſes, recover no other damages, but according to the quantity of the treſpaſs: Which the plaintiff for treſpaſſes in parks and vivaries [or fiſhponds] eſteemed at a high rate; but the jury commonly found the damages very ſmall; for the Common Law gave no encouragement to matters of pleaſure, becauſe they bring no profit to the commonwealth; and therefore it is not lawful for any man to erect a park, chaſe, or warren, without a licence under the great ſeal of the king, who is *pater patriæ*, and the head of the commonwealth. 2 *Inſt.* 199.

In parks] This is underſtood of a lawful park, whereunto three things are required: 1. A liberty, either by grant, as is aforeſaid, or by preſcription. 2. Incloſure by pale, wall, or hedge. And 3. Wild beaſts of the † park.

But this ſtatute extendeth not to a nominal park erected without lawful warrant, although it be called a park; for this ſtatute is very penal, and therefore, as hath been ſaid, extendeth only to a lawful park. 2 *Inſt.* 199.

Ponds] Fiſh-ponds, or waters wherein fiſh are kept and nouriſhed, which being a matter of profit, and for increaſe of victuals, any man may erect. 2 *Inſt.* 199.

At the ſuit of the party] This ſuit is intended in an action of treſpaſs; but the writ muſt be grounded on this ſtatute; for it is a maxim in the Common Law, that a ſtatute made in the affirmative, without any negative expreſſed or implied, doth not take away the Common Law: And therefore in this caſe the plaintiff may either have his remedy by the Common Law, or upon the ſtatute. If he bring his action of treſpaſs generally without grounding the ſame upon the ſtatute, then he waiveth the benefit of the ſtatute, and taketh his remedy by the Common Law. 2 *Inſt.* 200.

Great and large damages ſhall be awarded] By theſe words, if the damages be too ſmall, the court hath power to increaſe the damages;

---

† The beaſts of the park or chaſe properly extend to the buck, the doe, the fox, the marten, and the roe, but in a common and legal ſenſe, to all the beaſts of the foreſt. 1 *Inſt.* *ſect.* 378.

for the word *award* properly belongeth to the court. 2 *Inſt*. 200.

And ſhall have three years impriſonment] Both damages and impriſonment concern the plaintiff, and therefore the king's pardon cannot diſpenſe with them: But the ranſom, the finding of ſurety, and the abjuring the realm are puniſhments exemplary, and concern the king, and therefore he may pardon the ſame. 2 *Inſt*. 200.

And then ſhall find good ſurety] This ſurety muſt be by recogniſance to the king, and not to the plaintiff; for example; the ſureties in 10*l*. and the defendant in 40*l*. The condition muſt be general, and not reſtrained to *that* park or fiſh-pond; for example, *that he ſhall not for the future commit treſpaſs in* any *parks or ponds againſt the form of the ſtatute*, &c. 2 *Inſt*. 201.

He ſhall abjure the realm] *Abjure* ſignifieth a perpetual baniſhment of the defendant out of the realm, which to obſerve, he bindeth himſelf by oath; for ſo much is implied in the word *abjure*, which properly ſignifieth to *forſwear* the realm. 2 *Inſt*. 201.

By the Common Law no man can be exiled, or baniſhed out of his country; but in caſe of abjuration for felony. In all other caſes exile or baniſhment ought to be done by authority of parliament, (as here it is) and ſo are our books that ſpeak of exile or baniſhment to be underſtood. 2 *Inſt*. 201. If a perſon who hath abjured the realm, return again, he ſhall be puniſhed at the king's ſuit for the perjury and high contempt. *ib.*

The king ſhall have the ſuit] Either by indictment, information, or action of treſpaſs upon this act. 2 *Inſt.* 201.

Tame beaſts] This is underſtood of kine, oxen, ſheep, and other domeſtic beaſts within the park. 2 *Inſt.* 201.

If there be within the park tame deer, and treſpaſſers come to hunt and kill veniſon, and they kill a tame deer and carry it away, not knowing the ſame to be a tame deer, this is no felony; for the intent maketh felony, and ſo are the books to be intended. 2 *Inſt.* 201.

Stat. 21 *Ed.* 1. *ſt.* 2. *de Malefactoribus in Parcis.* See title **Conies.**

Stat. 1 *Hen.* 7. *c.* 7. See title **Conies.**

Stat. 19 *Hen.* 7. *c.* 11. *A. D.* 1503.

FOraſmuch as it is well underſtood and known, that the greateſt deſtruction of red deer and fallow within this realm in time paſt, hath been and yet is with nets called deerhayes, and buckſtalls, and ſtalking with beaſts, to the great diſpleaſure of our ſovereign lord the king, and of all the lords and other noblemen within this his realm, having foreſts, chaſes, or parks in their poſſeſſion, rule, or keeping; ſo that if the ſaid nets or ſtalking ſhould unlawfully be uſed and occupied in any time coming, as they have been in time paſt, the moſt part of the foreſts, chaſes, and parks of this realm ſhould be therewith deſtroyed: Be it therefore eſtabliſhed and enacted by the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by authority of the ſame, That any perſon ſpiritual or temporal, having no park, chaſe, nor foreſt of their own, keep, nor cauſe for to be kept any nets called deerhayes, or buckſtalls, by the ſpace of a month next after the proclamation of this act made: upon pain of forfeiture for every month that he or they keep or cauſe to be kept the ſame nets, hayes, or buckſtalls, xl li. And that no perſon from henceforth ſtalk, or cauſe any other perſon to ſtalk with any buſh or beaſts to any deer, being in any park, chaſe, foreſt, or without, but if it be within his own ground, chaſe, foreſt, or park, without licence of the owner, maſter of the game, or keeper of the ſame ground, chaſe, foreſt, or park, upon pain of forfeiture for every time that he or they ſo ſtalketh, x li. And furthermore, that no perſon ne perſons without his own ground ſlea, take, or cauſe to be taken by mean of craft or engine, any herons, without it be with hawking, or with long bow, upon pain of forfeiture for every heron taken or ſlain vi s. viii d. and that no perſon or perſons, without his or their own ground, take any young herons out of the neſt without licence of the owner of the ground where the ſaid neſt

The penalty for keeping of deer-hayes or buckſtalls.

The penalty for ſtalking or cauſing another to ſtalk at a deer without licence.

neſt is, upon pain of forfeiture for every heron ſo taken out of the neſt xs. and that every man that will, may and ſhall be admitted to ſue for any of the ſaid forfeitures by action of debt, and like proceſs to be had and made therein, as in other actions of debt at the making of this act, and that the defendant be not admitted to tender nor do his law in any ſuch action, nor any eſſoin, nor protection to be allowed for the defendant in the ſame: And that two juſtices of peace in their ſeſſions ſhall have authority to call before them any perſons ſuſpected of the premiſſes, and to their diſcretion to examine them in the premiſſes. And if by their examination, the party ſo examined be found in default contrary to the premiſſes, that then he ſo found in default, to be committed to priſon, till he have found ſurety for payment of the ſame forfeitures to the king. And that thoſe juſtices that ſo examined them, ſhall have the tenth part of every forfeiture for their labour in that behalf.

The penalty for taking of young herons out of the neſt.

Two juſtices of peace may examine perſons ſuſpected, and puniſh them.

Stat. 5 *Eliz. c.* 21. See title Fiſh.

Stat. 3 *Jac.* 1. *c.* 13. *A. D.* 1605.

WHEREAS ſince the making of the ſtatute of *quinto reginæ Elizabethæ*, *c.* 21. there have been divers grounds incloſed, and uſed and kept for the preſervation and maintenance of deer and conies: And whereas there is not by the ſaid ſtatute of *quinto*

Certain offences for which the ſtatute of 5 Eliz. 21 hath not provided puniſhment.

Eliz. neither by any other act now in force, any ſufficient remedy provided againſt ſuch malefactors and evil diſpoſed perſons, as ſhall chaſe, hunt, or kill any the deer or conies within ſuch grounds, ſithence the ſaid ſtatute of *quinto Eliz.* incloſed and kept and uſed for the maintenance and preſervation of the ſaid game, as aforeſaid, or any former grounds which have been, ſithence the making of the ſaid ſtatute, in any part altered: By reaſon whereof many riots, manſlaughters, miſchiefs, and other inconveniences have been daily committed and done, and like to be committed and done, if circumſpect remedy be not hereunto provided.

The penalty for breaking a park or warren, or for hunting of deer or conies. ALT. 7 J. 13. 13 Car. 2. c. 10.

Be it therefore enacted by the king's moſt excellent majeſty, the lords ſpiritual and temporal, and the commons, of this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, after the feaſt of St. *James* the apoſtle next enſuing, ſhall in the night time, or by day, wrongfully or unlawfully break or enter into any park impaled, or any other ſeveral grounds encloſed with wall, pale, or hedge, and uſed or kept for the keeping, breeding, and cheriſhing of any deer or conies, and wrongfully or unlawfully ſhall hunt, drive, or chace out, or take, kill, or ſlay any deer or conies within any ſuch impaled park, or cloſed ground with pale, wall, or other encloſure, as aforeſaid, againſt the will, mind, or pleaſure of the owners, occupiers, or poſſeſſioners of the ſame, not having lawful title or authority ſo to do, and therefore ſhall be lawfully

fully convicted at the ſuit of our ſovereign lord the king, his heirs, or ſucceſſors, or the party grieved, ſhall ſuffer impriſonment of his or their bodies by the ſpace of three months, and alſo ſhall yield and pay to the party grieved his treble damages and coſts, to be aſſeſſed and rated by the juſtices before whom he or they ſhall be convicted, after the ſaid three months expired, and ſhall find ſufficient ſureties for his and their good abearing againſt the king, his heirs, and ſucceſſors, and all his liege people, for the ſpace of ſeven years after, or elſe ſhall remain and continue ſtill in priſon without bail or mainprize, until ſuch time as he or they ſo offending, ſhall find ſufficient ſureties, during the ſaid time and ſpace of ſeven years.

Which juſtices may hear and determine the offences aforeſaid.

And be it likewiſe enacted by the authority aforeſaid, That the juſtices of *Oyer* and *Terminer*, juſtices of aſſize in their circuits, and juſtices of peace and gaol-delivery in their ſeſſions, ſhall, by virtue hereof, have power and authority to inquire, hear, and determine all and ſingular the ſaid offences, by examination of the offenders, and to make and award proceſs thereupon, as well upon indictments taken before them, as by bill of complaint, information, or any other action: In which ſuit or action no eſſoin, wager of law, or protection ſhall be allowed.

The remedy of the party grieved.

And be it alſo enacted by the authority aforeſaid, That it ſhall and may be lawful to the party grieved, to ſue and take his further remedy againſt all and every ſuch offender or offenders, for his loſs and damages, and to recover the treble value of the ſame in that behalf, as well before the juſtices of *Oyer* and *Terminer*, juſtices of aſſize in their circuits, and juſtices of the peace and gaol-delivery in their ſeſſions, or elſewhere, in any other the king's majeſty's courts of record at *Weſtminſter*: And that upon true ſatisfaction of the ſaid treble damages to the party grieved, or upon the confeſſion or acknowledgement thereof by the ſaid party offending, before the juſtices in open ſeſſions holden for the county, wherein the ſame offence ſhall be committed, it ſhall be at the liberty of the ſaid party grieved, to whom the ſaid offence is committed, to releaſe at his pleaſure the ſuretiſhip of the good behaviour, at any time within the ſaid ſeven years, or before: Any thing in this preſent act before mentioned or declared to the contrary notwithſtanding.

In what caſe the ſuretiſhip of the good behaviour may be releaſed by the party grieved.

And be it alſo further enacted by the authority aforeſaid, That if any perſon or perſons, not having any manors, lands, tenements, or hereditaments, of the clear yearly value of forty pounds, or not worth in goods or chattels the ſum of two hundred pounds, ſhall uſe any gun, bow, or croſs-bow, to kill any deer or conies, or ſhall keep any buckſtall or engine, hayes, gate-nets, purſe-nets, ferrets, or cony-dogs, except ſuch perſon or perſons as ſhall have any grounds imparked with pale, or encloſed with wall or hedge, as aforeſaid, uſed for the keeping, breeding, or cheriſhing of any deer or conies; the encreaſing of which ſaid conies ſhall amount to the clear yearly value of forty ſhillings, to be letten at the leaſt,

The penalty for ſhooting, with gun or bow, at deer or conies, or for keeping of engines.

leaſt, or keepers or warreners in their parks, warrens, or grounds belonging to their charge, that then any perſon having lands, tenements, or hereditaments of the clear yearly value of one hundred pounds in fee-ſimple, fee-tail, or for life, in his own right or in the right of his wife, may take from the perſon or poſſeſſion of ſuch malefactor or malefactors, and to his own uſe for ever keep ſuch guns, bows, croſs bows, buckſtalls, or engines, hays, gate-nets, purſe-nets, ferrets, and cony-dogs.

In what caſe the juſtices may diſcharge the ſuiter of good abearing.

And be it further enacted by the authority aforeſaid, That if any perſon or perſons, at any time hereafter, ſhall fortune to be bound, before any the juſtices before mentioned, to the king, his heirs, or ſucceſſors, for his or their good abearing for ſeven years, according to the tenor of this act, and the ſame party or parties, ſo bound, ſhall afterward within the ſaid ſeven years come before the juſtices of the peace of the ſaid county, where the ſaid offence was committed, or ſome of them, in open quarter ſeſſions, and there in the ſaid ſeſſions confeſs and acknowledge his or their ſaid offence or offences, that he or they is or are ſorry therefore, and ſatisfy the party or parties grieved, according to the tenor of this act, that then the ſame juſtices, before whom the ſaid confeſſion ſhall be ſo made, ſhall and may have power and authority by virtue of this act, in the ſame open ſeſſions, or in any other ſeſſions afterwards to be holden before the ſaid juſtices in the ſaid county, within the ſaid term of ſeven years, if it ſhall ſeem good to their diſcretions, to diſcharge the ſaid recognizance and bond ſo taken, and alſo the ſaid party and parties ſo bound: This act or any thing therein contained to the contrary thereof notwithſtanding.

A park or warren made without the king's licence.

Provided always, That this act, or any thing therein contained, do not extend to any park or incloſed ground, hereafter to be made and uſed for deer or conies, without the grant or licence of our ſovereign lord the king, his heirs, or ſucceſſors.

Offences committed in the night only. This proviſo for deer REP. 7 Jac. 13.

Provided always, and be it further enacted, That this act, nor any thing therein contained, ſhall extend to any offence or offences concerning the hunting, chaſing, or killing of deer or conies, which ſhall be done or committed in the day time, but only to ſuch offences as ſhall hereafter be done or committed in the night time only: Any thing in this act contained to the contrary thereof notwithſtanding. 3 *Car.* 4. *continued until the end of the firſt ſeſſion of the next parliament.* 17 Car. 4. c. 4. *continued indefinitely.*

Stat. 7 *Jac.* 1. *c.* 13. *A. D.* 1609.

The forfeiture for hunting or killing of deer in a park, &c.

WHEREAS queſtion and doubt hath grown and riſen upon the expoſition of a ſtatute made in the ſecond ſeſſion of this preſent parliament, intituled, *An act againſt unlawful hunting and ſtealing of deer and conies*, for that in the body of the ſaid act all unlawful hunting, driving, or chaſing out, or taking, killing, or ſlaying any deer or conies within any the parks, places, or grounds in the ſaid ſtatute mentioned, againſt the will, mind, or pleaſure of the owners, occupiers, or poſſeſſioners of the ſame (as well by day as by night) is prohibited and made penal in ſuch manner and form, as in and by the ſaid ſtatute it doth and may more plainly appear: And yet by a proviſo in the ſaid ſtatute contained it is enacted, That the ſaid act, nor any thing therein contained, ſhould extend to any offence or offences concerning the hunting, chaſing, or killing of deer or conies, which ſhould be done or committed in the day time here, but only to ſuch offences as ſhould be then after done or committed in the night time only; any thing in the ſaid act contained to the contrary notwithſtanding.

For the explanation of which doubt and queſtion, and for that it is found by experience, that malefactors of that kind have been much encouraged to chaſe, hunt, kill, and deſtroy deer in the day time, by colour of the ſaid proviſo, whereby many deer, as well in the parks of our ſovereign lord the king, as of many of his highneſs loving ſubjects, have been and are ſtill like to be unlawfully and riotouſly chaſed, hunted, and deſtroyed by many idle, looſe, and diſorderley perſons: Be it therefore enacted by the authority of this preſent parliament, That from and after the feaſt of St. *James* the apoſtle next enſuing, ſo much of the ſaid proviſo in the ſaid ſtatute contained, as concerneth the hunting, chaſing out, or killing of deer only, ſhall be repealed, fruſtrated, and made void; any thing

A repeal of ſo much of a proviſo contained in the ſtat. of 3 Jac. 13. as concerneth the hunting of deer.

in the ſaid proviſo of the ſaid act contained to the contrary thereof in any wiſe notwithſtanding.

And whereas it was by the ſaid former ſtatute, amongſt other things enacted, That if any perſon or perſons did or ſhould wrongfully or unlawfully hunt, chaſe, or drive out, or take, kill, or ſlay any deer within any park, or other place in the ſaid ſtatute mentioned, againſt the will, mind, or pleaſure of the owners, occupiers, or poſſeſſioners of the ſame, that then every ſuch perſon ſo offending ſhould ſatisfy and pay unto the party grieved, his treble damages, in ſuch manner and form as in the ſaid ſtatute is mentioned: By reaſon of the uncertainty whereof few or no offenders have been diſcouraged in their ſaid huntings, drivings, chaſings out, taking, killing, or ſlaying of deer:

The forfeiture for hunting or killing deer in a park or incloſed ground.

For remedy whereof, be it further by the authority of this preſent parliament enacted, That if any perſon or perſons from and after the feaſt of St. *James* the apoſtle, next coming after the end of this preſent ſeſſion of parliament, ſhall willingly commit any the offences in the ſaid ſtatute mentioned, concerning the unlawful chaſing out, hunting, driving, taking, killing, or ſlaying of deer in any park or incloſed ground, which now is or hereafter ſhall be made or uſed for deer, againſt the will, mind, or pleaſure of the owners, occupiers, or poſſeſſioners, or keepers of the ſame; that then all and every ſuch perſon and perſons ſo offending ſhall for every ſuch offence pay and ſatisfy unto the party grieved the ſum of ten pounds of current money of *England*, or elſe treble damages and coſts, at the election of the party grieved; the ſame to be recovered in ſuch manner and form, as in and by the ſaid ſtatute is limited and appointed for the recovery, taxing, or aſſeſſing of the ſaid treble damages; any thing in the ſaid ſtatute, or in this preſent act contained, to the contrary notwithſtanding. *Continued indefinitely by* 3 *Car.* 1. *c.* 4. *and* 16 *Car.* 1. *c.* 4.

Stat. 13 *Car.* 2. *c.* 10. *A. D.* 1661.

FOR the better preventing of the unlawful courſing, hunting, taking, or killing of deer, by many idle, looſe, and diſorderly perſons; Be it enacted by the king's moſt excellent majeſty, and by the advice and conſent of the lords and commons, in parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons ſhall from and after the firſt day of *Auguſt* next unlawfully courſe, kill, hunt, or take away any red or fallow deer, in any foreſt, chaſe, purlieu, paddock, wood, park, or other ground, where deer are or have been uſually kept within the realm of *England*, or dominion of *Wales*, without the conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein, and ſhall be convicted thereof, by the confeſſion of the party, or by the oath of one or more credible witneſſes, before one or more juſtices of the peace (who are hereby impowered to adminiſter an oath to that purpoſe); ſuch perſon being proſecuted for ſuch offence within ſix months after ſuch offence done; that then every perſon ſo offending ſhall forfeit for every ſuch offence the ſum of twenty pounds, to be levied by way of diſtreſs upon the goods and chattels of every ſuch offender, by warrant under the juſtices hand, before whom ſuch conviction ſhall be made; the one moiety of the ſaid twenty pounds to be given to the informer, and the other moiety to the owner of the deer; and for want of ſufficient diſtreſs the offender ſhall be committed to the houſe of correction for ſix months, and there to be put to hard labour, or to the common gaol for one whole year, without bail or mainprize, at the diſcretion of the juſtices of the peace, before whom ſuch conviction ſhall be (and not to be diſcharged from thence, till he or they have given ſufficient ſureties for their good behaviour, for one whole year next enſuing, after his or their enlargement) provided, That where any offender ſhall be puniſhed by force of this act, that he ſhall not be proſecuted nor incur the penalty of any other law or ſtatute for the ſame offence.

◆

Stat. 3 & 4 *Will.* & *Ma.* *c.* 10. *A. D.* 1692. An act for the more effectual diſcovery and puniſhment of deer ſtealers.

Preamble.

WHEREAS notwithſtanding the many good laws before this time made, and ſtill in force, which do prohibit unlawful courſing, hunting, or killing of deer; yet inaſmuch as the penalties thereby provided are found by daily experience not to be ſufficient to deter divers lewd, ſturdy, and diſorderly perſons, who confederate together in great numbers, making amongſt themſelves, as it were, a brotherhood and fraternity, whereby if any of them ſhall be diſcovered and convicted, which ſeldom happens, becauſe of their great force and clandeſtine manner of combination, they by a common contribution (for the moſt part) advance and pay for ſuch perſons apprehended, the pecuniary penalties (which are but ſmall) inflicted on ſuch offenders, by reaſon whereof the other confederates eſcape diſcovery and condign puniſhment.

Perſon convict before a juſtice of peace of deer ſtealing, if he afterwards hunt deer, forfeits 20 l.

2. Therefore, for the more effectual diſcovery and puniſhment of ſuch perſons, Be it enacted by the king and queen's moſt excellent majeſties, and by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons ſhall, from and after the twenty-fifth day of *March* in the year of our

lord one thouſand ſix hundred and ninety-two, unlawfully courſe, hunt, take in toyles, * kill, wound, or take away any red or fallow deer in any foreſt, chaſe, purlieu, paddock, wood, park, or other ground incloſed, where deer are, have, or ſhall be uſually kept, within the realm of *England* or dominion of *Wales*, without the conſent of the owner or perſon chiefly intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein, and ſhall be convicted thereof by the confeſſion of the party, or by the oath of one or more credible witneſs or witneſſes, before one or more juſtices of the peace of the ſame county, wherein the offence ſhall be committed, or the party offending apprehended (which oath the ſaid juſtice or juſtices are hereby impowered to adminiſter) and ſuch perſons being proſecuted for ſuch offence within twelve months after ſuch offence done; that then every ſuch perſon ſo offending by unlawful courſing or hunting only, when no deer is taken, wounded, or killed, ſhall forfeit for every ſuch offence the ſum of twenty pounds; and in caſe any deer ſhall by ſuch perſon or perſons be wounded, taken in toyles, or killed, that for each deer ſo wounded, killed, or taken, ſuch perſon or perſons ſhall reſpectively forfeit and

For each deer wounded, 30 l.

---

* Where a man kills deer in purſuance of a ſuppoſed right which he has, he is not within the intent of this, or any other act againſt deer ſtealing. L. *Raym*. 584. See this caſe at length hereafter in this title.

pay the ſum of thirty pounds, to be levied by way of diſtreſs * upon the goods and chattels of every ſuch offender, by warrant under the juſtice or juſtices hand, before whom ſuch conviction or convictions ſhall be made †; the one third part of ſuch forfeitures to be given to the informer or informers, the other part to the uſe of the poor of the pariſh where the offence ſhall be committed, and the other third part to the owner of ſuch deer ‡; and for want of ſufficient diſtreſs §, that then ſuch

Penalty levied by diſtreſs.

---

* Tho' ſale of the goods is not mentioned in the ſtatute, yet nevertheleſs where the law gives a diſtreſs for a publick benefit, the officer may ſell. 1 *Salk*. 379.

† Altho' the conſtable is not appointed to execute this warrant, nor is he ſo much as named in the clauſe; yet he is bound to obey the warrant, and is indictable if he does not. But he need not return the warrant itſelf, for that is not required, and it may be neceſſary to keep it for his own juſtification; but he muſt either return the warrant, or certify what he has done upon it. 1 *Salk*. 381.

‡ The penalty need not be diſtributed by the conviction, *viz*. 10 *l*. to the informer, 10 *l*. to the poor, and 10 *l*. to the party grieved; for the judgment in ſuch caſes ſeldom mentions a diſtribution; it is enough to ſay, that he is convicted, and hath forfeited 30 *l*. according to the ſtatute. 1 *Salk*. 383.

§. If the juſtice finds there is nothing to diſtrain, then he muſt make a record thereof, and make an adjudication for *corporal* puniſhment; but the offender is not to pay part, and ſuffer *corporally* for the reſidue. L. *Raym*. 546, 1195, 6. See the caſe of the *King* and *Whitlock* hereafter in this title.

perſon ſhall ſuffer impriſonment by the ſpace of one whole year, without bail or mainprize, and ſhall be ſet in the pillory by the ſpace of one hour, on ſome market-day, in the next adjoining town to the place where ſuch offence was committed, by the chief officer or officers of ſuch market town, or by his or their under-officer or officers.

Conſtables may ſearch ſuſpicious houſes by juſtice of peace his warrant.

3. And be it further enacted, That every conſtable, headborough, and tythingman (being thereto authorized by the warrant of one or more juſtices of peace, under his or their hands and ſeals) ſhall and may have full power and authority (and hereby is required) to enter into and ſearch (in ſuch manner, and with ſuch power, as in caſe where goods are ſtolen or ſuſpected to be ſtolen) the houſe or houſes, out-houſes, or other places belonging to ſuch houſes of ſuſpected perſons; and in caſe any veniſon, or skin of any deer, or toyles, ſhall there be found, ſuch officer ſhall apprehend ſuch offender, and carry him before ſome juſtice of the peace of the ſame county; and if ſuch perſon do not give a good account how he came by ſuch veniſon, ſkins, or toyles, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not, in ſome convenient time, to be ſet him by the ſaid juſtice, produce the party of whom he bought ſuch veniſon, ſkins, or toyles, or ſome other credible witneſs to depoſe upon oath ſuch ſale of the ſaid veniſon or ſkins; that then ſuch perſon not giving ſuch good account, nor producing any ſuch witneſs, as aforeſaid, ſhall be convicted by the ſaid juſtice of ſuch offence, who on ſuch conviction ſhall

If veniſon, &c. be found, and perſon whoſe houſe it is cannot give a good account, it is a conviction of deer-ſtealing.

be ſubject unto the forfeitures and penalties hereby inflicted for the killing of any one deer in the ſame manner as if thereof convicted, as aforeſaid.

Conſtable may detain the perſon till diſtreſs returned.

4. And to the end that no perſons convicted of any the offences, as aforeſaid, may eſcape puniſhment by their flight or other removal, after ſuch conviction, Be it further enacted by and with the authority aforeſaid, That it ſhall and may be lawful for, and hereby power and authority is given (after conviction, as aforeſaid) to the conſtable or other officer or perſon or perſons proſecuting, to detain in cuſtody ſuch offender or offenders (in caſe he or they ſhall not preſently pay the monies due by the ſaid conviction) during ſuch reaſonable time as a return may be conveniently had and made to the warrant for the diſtreſs upon ſuch conviction, ſo as ſuch detainer do not exceed two days.

Perſons having deer in incloſed ground may oppoſe offenders.

5. And to the end all owners of deer in any incloſed ground may be indemnified in the juſt defence of ſuch their right, Be it enacted, That any owner of ſuch deer, or any perſon or perſons acting by, from and under him, ſhall and may oppoſe and reſiſt ſuch offenders in the ſame manner, and be equally indemnified for ſo dying, as if ſuch fact had been committed within any ancient chaſe or park whatſoever.

No certiorari except the offender give ſecurity to pay the proſecutor full coſts, &c.

6. And whereas divers offenders duly convicted, do commonly procure writs of *certiorari* to remove ſuch convictions into ſuperior courts at *Weſtminſter*, in hopes thereby to diſcourage and weary out ſuch perſons injured

by great delays, expences, and incertainties; Be it therefore enacted, That no *certiorari* ſhall be allowed to remove any conviction made, or other proceeding of, for, or concerning any matter or thing in this act, unleſs the party or parties, againſt whom ſuch conviction ſhall be made, ſhall before the allowance of ſuch *certiorari*, become bounden to the perſon or perſons proſecuting, in the ſum of fifty pounds, with ſuch ſufficient ſureties, as the juſtice or juſtices of the peace, before whom ſuch offender was convicted, ſhall think fit, with condition to pay unto the ſaid proſecutors, within one month after ſuch conviction confirmed, or a *procedendo* granted, their full coſts and damages, to be aſcertained upon their oaths; and that in default thereof it ſhall be lawful for the ſaid juſtice and juſtices, and others, to proceed to the due execution of ſuch conviction, in ſuch manner as if no *certiorari* had been awarded.

Perſons puniſhed by this act no other way puniſhable.

7. Provided, that where any offender ſhall be puniſhed by force of this act, that he ſhall not be proſecuted, nor incur the penalty of any other law or ſtatute for the ſame offence.

Perſons ſued for any thing done by virtue of this act may plead the general iſſue.

8. Provided always, That if any perſon or perſons whatſoever ſhall be ſued or proſecuted for or by reaſon of any matter or thing which he or they ſhall do in purſuance of this act, it ſhall and may be lawful to and for the perſon or perſons ſo ſued, or proſecuted, to plead the general iſſue, and give the ſpecial matter in evidence.

9. Provided alſo, and be it enacted by the authority aforeſaid, That if any perſon or perſons ſhall in the night time pull down and deſtroy, or cauſe to be pulled down and deſtroyed, the pales, or walls of any park, foreſt, chaſe, purlieu, paddock, wood, or other ground incloſed, where any red or fallow deer ſhall be then kept, that ſuch perſon or perſons ſo offending, being thereof convicted by the oath of one or more credible witneſs or witneſſes, before one or more juſtice or juſtices of the peace of the ſame county, wherein the offence ſhall be committed, ſhall, by warrant from ſuch juſtice or juſtices, as aforeſaid, ſuffer impriſonment for three months, without bail or mainprize.

Perſons convict before a juſtice of peace for pulling down the pales of any park, impriſoned three months.

Stat. 5 *Geo.* 1. *cap.* 15. An act for making more effectual an act of the third and fourth years of the reign of king *William* and queen *Mary*, intituled, *An act for the more effectual diſcovery and puniſhment of deer ſtealers.*

1. WHEREAS divers idle and diſorderly perſons, who have been lawfully convicted for unlawfully courſing, hunting, killing, or taking away deer, upon the ſtatute made in the third and fourth years of the reign of the late king *William* and queen *Mary*, for the more effectual diſcovery and puniſhment of deer ſtealers, have procured writs of *certiorari* to remove ſuch convictions into ſuperior

3 & 4 W & M. c. 10.

courts at *Weſtminſter*, purely to avoid the penalties of the ſaid ſtatute; whereby the party or parties convicted are only obliged to give ſecurity to the perſon or perſons proſecuting for the payment of their coſts and damages; and there being no proviſion made for ſecuring the forfeitures incurred for the offence, or the impriſonment of the offenders, although ſuch convictions ſhould be confirmed by the ſaid courts, the ſaid offenders have opportunity to conceal their effects, and withdraw their perſons from puniſhment; and the juſtice intended by the ſaid act hath been evaded, and looſe and wicked perſons greatly encouraged to follow ſuch evil practices: For the prevention whereof be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no *certiorari* ſhall be allowed to remove any conviction made, or other proceedings of, for, or concerning any matter or thing in the ſaid ſtatute, unleſs the party or parties convicted ſhall, before the allowance of ſuch *certiorari*, and at the ſame time that ſecurity is given for the payment of the coſts and damages to the proſecutor or proſecutors, become alſo bound to the juſtice or juſtices of the peace, before whom ſuch conviction was made with ſuch ſufficient ſureties as ſuch juſtice or juſtices ſhall approve of, in the penalty of ſixty pounds for each offence, with condition to proſecute ſuch writ of *certiorari* with effect, and to pay ſuch juſtice or juſtices the for-

No certiorari ſhall be allowed to remove any conviction againſt the recited act, unleſs the party convicted give ſecurity to the juſtice to proſecute ſuch writ with effect, &c.

forfeitures due by ſuch conviction, to be diſtributed as the ſaid ſtatute directs, or to render the perſon or perſons convicted to ſuch juſtice or juſtices within one month next after ſuch conviction ſhall be confirmed, or a *procedendo* granted; and that in default thereof it ſhall be lawful for the ſaid juſtice or juſtices, and all other perſons whatſoever, to proceed to the due execution of ſuch conviction, in ſuch manner as if no *certiorari* had been awarded.

In default, the juſtice may proceed to execute ſuch conviction.

2. And be it further enacted by the authority aforeſaid, That after the confirmation of any conviction or convictions upon the ſaid ſtatute by any of the ſaid ſuperior courts, and delivering the rule to the ſaid juſtice or juſtices, whereby ſuch conviction or convictions hath or have been ſo confirmed, it ſhall and may be lawful for, and full power and authority is hereby given to, ſuch juſtice or juſtices to proceed againſt the party or parties convicted, in the ſame manner as if a *procedendo* had been granted.

After confirmation of a conviction, the juſtice may proceed as if a procedendo had been granted.

3. Provided always, and be it enacted by the authority aforeſaid, That if any perſon or perſons ſhall be ſued or proſecuted for any matter or thing which he or they ſhall do in purſuance of this act, or of the ſaid ſtatute made in the third and fourth years of the reign of the late king *William* and queen *Mary*, it ſhall and may be lawful to and for the perſon or perſons ſo ſued or proſecuted to plead the general iſſue, and give the ſpecial matter in evidence; and if a verdict ſhall paſs for the defendant, or the plaintiff ſhall become

Perſons ſued may plead the general iſſue, &c.

nonſuit, or ſuffer a diſcontinuance, or if upon a demurrer judgment ſhall be given againſt the plaintiff, the defendant ſhall have and recover his treble coſts, and have the like remedy for the ſame, as any defendant hath in any other caſe by law.

and ſhall recover treble coſts.

Perſons convicted to become bound in 50 l. to be of good behaviour, and not to offend in like manner,

4. And be it further enacted by the authority aforeſaid, That all and every perſon and perſons convicted, or who ſhall hereafter be convicted by virtue of the ſaid ſtatute, ſhall, before he or they ſhall be diſcharged out of cuſtody, become bound to ſuch perſon or perſons, againſt whom ſuch offence was or ſhall be committed, in the ſum of fifty pounds, with condition for his or their future good behaviour, and that he or they ſhall not offend in like manner; and upon his or their failure or refuſal to enter into ſuch bond, that he or they ſhall be committed to the county gaol where ſuch offence was or ſhall be done, until ſuch bond ſhall be given; and that if ſuch perſon or perſons ſhall at any time after his or their becoming bound, as aforeſaid, be convicted for any matter or thing in the ſaid ſtatute, that then the ſaid bond ſhall be deemed to be forfeited, and the penalty be recovered, with full coſts of ſuit, in any of the courts at *Weſtminſter*; which ſaid penalties ſhall be diſtributed in the ſame manner as the forfeitures are by the ſaid ſtatute to be diſtributed; and the party or parties ſo convicted ſhall be likewiſe liable to the penalties and forfeitures in the ſaid ſtatute.

on refuſal to be committed till ſuch bond given.

If convicted after, the bond to be forfeited, &c.

5. And whereas divers keepers of foreſts, chaſes, and parks, in breach of the truſt repoſed in them, have been in confederacy with deer-ſtealers, whereby they have been greatly encouraged; Be it therefore enacted by the authority aforeſaid, That if any keeper or keepers, or other officer of any foreſt, chaſe, purlieu, paddock, wood, park, or place where deer are uſually kept, ſhall be convicted upon the ſaid ſtatute for killing or taking away any red or fallow deer, or being aiding or aſſiſting therein, without the conſent of the owner or perſon chiefly intruſted with the cuſtody of ſuch foreſt, chaſe, purlieu, paddock, wood, park, or place where ſuch deer ſhall be killed or taken away, that then ſuch keeper or keepers, or other officer, being ſo convicted, ſhall forfeit the ſum of fifty pounds for each deer ſo killed or taken away, to be levied by way of diſtreſs upon his or their goods and chattels, to be diſtributed as the forfeitures in the ſaid ſtatute are to be diſtributed; and for want of ſuch diſtreſs, that then he or they ſhall ſuffer impriſonment for three years, without bail or mainprize, and be ſet in the pillory for two hours, on ſome market day in the next adjoining town to the place where the offence was committed, by the chief officer or officers of ſuch market towns, or by his or their under officer or under officers.

Keeper or other officer of any foreſt, &c. convicted of killing any deer without the owner's conſent, ſhall forfeit 50l. for each deer;

to be levied by diſtreſs;

and for want thereof to be impriſoned three years, and ſet in the pillory.

6. And whereas by the ſaid ſtatute of the third and fourth years of king *William* and queen *Mary*, ſuch perſons are only to be puniſhed with three months impriſonment, who do in the night time pull down or deſtroy

the pales or walls of any park, foreſt, or other ground where deer are kept, which hath been found ineffectual to prevent miſchiefs of that nature; Be it therefore enacted by the authority aforeſaid, That if any perſon or perſons ſhall at any time pull down or deſtroy, or cauſe to be pulled down or deſtroyed, the pale or pales, or walls of any park, foreſt, chaſe, purlieu, paddock, wood, or other ground incloſed, where any red or fallow deer ſhall be then kept, without the conſent of the owner, or the perſon chiefly intruſted with the cuſtody thereof, that ſuch perſon or perſons ſo offending, and being convicted thereof by confeſſion, or by the oath of one or more credible witneſs or witneſſes, before one or more juſtice or juſtices of the peace of the ſame county wherein the offence ſhall be committed, ſhall be ſubject unto the forfeitures and penalties by the ſaid ſtatute inflicted for the killing of any one deer, in the ſame manner as if he or they had been thereof convicted according to the ſaid ſtatute.

Perſons convicted of pulling down the pales, &c. of any park, &c. ſhall be ſubject to the penalties of 3 & 4 W. & M. for killing any one deer.

Stat. 5 *Geo.* 1. *cap.* 28. An act for the further puniſhment of ſuch perſons as ſhall unlawfully kill or deſtroy deer in parks, paddocks, or other incloſed grounds.

Preamble.

I. WHEREAS in defiance of the laws already in being, ſeveral diſorderly and riotous perſons have of late in great numbers, with armed force, entred parks, and other incloſed grounds where deer are kept, whereby bloodſhed and murder hath frequently happened, and greater miſchiefs may enſue: For the preventing and puniſhment of which offences, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, That if any perſon or perſons ſhall, from and after the firſt day of *May* one thouſand ſeven hundred and nineteen, enter into any park, paddock, or other incloſed ground where deer are uſually kept, and wilfully wound or kill any red or fallow deer there, without the conſent of the owner or owners of ſuch park, paddock, or incloſed ground, or of the perſon or perſons intruſted with the care or cuſtody of ſuch park, paddock, or incloſed ground, or ſhall be aiding or aſſiſting in the committing of any ſuch offence, and being indicted for any ſuch offence before any judge or juſtices of gaol delivery for the county wherein ſuch park, paddock, or incloſed ground ſhall lie, and ſhall, upon ſuch indictment be by verdict or his own confeſſion convicted of any ſuch offence, the perſon or perſons ſo convicted, as aforeſaid, ſhall be ſent, as ſoon as conveniently may be, to ſome of his majeſty's plantations in *America*, for the ſpace of ſeven years; and the court before whom ſuch offender or offenders ſhall be convicted, or any ſubſequent court held at the ſame place, with like authority as the former, ſhall have power to

After May 1. 1719. perſons convicted of entring into any park, &c. and killing or wounding any deer without conſent of the owner, &c. or aiding, &c.

ſhall be tranſported for 7 years.

convey, transfer, and make over ſuch offenders, by order of court, to the uſe of any perſon or perſons who ſhall contract for the performance of ſuch tranſportation.

This act ſhall not repeal or alter any former law for the puniſhment of deer ſtealers.

2. Provided, That nothing herein contained ſhall be expounded, deemed, or taken, to repeal, alter, or make void, any former law or ſtatute now in being, made or intended for the puniſhment of deer ſtealers: And provided alſo, That where any offender ſhall be puniſhed by force of this act, and according to the true intent and meaning thereof, he ſhall not be proſecuted nor incur any penalty for the ſame offence by force of any other law or ſtatute whatſoever.

Offenders puniſhed by this act, ſhall not be again proſecuted for the ſame offence.

Stat. 9 *Geo.* 1. *cap.* 22. An act for the more effectual puniſhing wicked and evil diſpoſed perſons going armed in diſguiſe, and doing injuries and violences to the perſons and properties of his majeſty's ſubjects, and for the more ſpeedy bringing the offenders to juſtice.

1. WHEREAS ſeveral ill-deſigning and diſorderly perſons have of late aſſociated themſelves under the name of *Blacks*, and entred into confederacies to ſupport and aſſiſt one another in ſtealing and deſtroying of deer, robbing of warrens and fiſh ponds, cutting down plantations of trees, and other illegal practices, and have, in great numbers, armed with ſwords, fire arms, and other of-

fenſive weapons, ſeveral of them with their faces blacked, or in diſguiſed habits, unlawfully hunted in foreſts belonging to his majeſty, and in the parks of divers of his majeſty's ſubjects, and deſtroyed, killed, and carried away the deer, robbed warrens, rivers, and fiſh ponds, and cut down plantations of trees; and have likewiſe ſolicited ſeveral of his majeſty's ſubjects, with promiſes of money, or other rewards, to join with them, and have ſent letters, in fictitious names, to ſeveral perſons, demanding veniſon, and money, and threatning ſome great violence, if ſuch their unlawful demands ſhould be refuſed, or if they ſhould be interrupted in, or proſecuted for ſuch their wicked practiſes, and have actually done great damage to ſeveral perſons, who have either refuſed to comply with ſuch demands, or have endeavoured to bring them to juſtice, to the great terror of his majeſty's peaceable ſubjects: For the preventing which wicked and unlawful practices, be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, from and after the firſt day of *June* in the year of our lord one thouſand ſeven hundred and twenty-three, being armed with ſwords, fire-arms, or other offenſive weapons, and having his or their faces blacked, or being

Perſons armed offenſively, having their faces blacked, or being otherwiſe diſguiſed, appearing in any foreſt, park, &c. or in any warren, &c. and hunting, wounding, or killing any deer, &c. or ſtealing of fiſh out of any river or pond, &c. guilty of felony.

otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park, paddock, or grounds incloſed with any wall, pale, or other fence, wherein any deer have been or ſhall be uſually kept, or in any warren or place where hares or conies have been or ſhall be uſually kept, or in any high road, open heath, common, or down; or ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, or unlawfully rob any warren or place where conies or hares are uſually kept; or ſhall unlawfully ſteal or take away any fiſh out of any river or pond; or if any perſon or perſons, from and after the ſaid firſt day of *June*, ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of his majeſty's foreſts or chaſes, which are or ſhall be incloſed with pales, rails, or other fences, or in any park, paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or ſhall unlawfully and maliciouſly break down the head or mound of any fiſh pond, whereby the fiſh ſhall be loſt or deſtroyed; or ſhall unlawfully and maliciouſly kill, maim, or wound any cattle, or cut down, or otherwiſe deſtroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or ſhall ſet fire to any houſe, barn, or out-houſe, or to any hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood; or ſhall wilfully and maliciouſly ſhoot at any perſon in any dwelling-houſe, or other place; or ſhall knowingly ſend any letter, without any name ſubſcribed thereto, or ſigned with a fictitious name, demanding money, veniſon, or other valuable thing; or ſhall forcibly reſcue any perſon, being lawfully in cuſtody of any officer, or other perſon, for any of the offences before mentioned; or if any perſon or perſons ſhall, by gift or promiſe of money, or other reward, procure any of his majeſty's ſubjects to join him or them in any ſuch unlawful act; every perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy.

Perſons guilty of any the offences in this act, not ſurrendring themſelves, and diſcovering their accomplices, &c. guilty of felony.

2. And whereas, notwithſtanding the laws now in force againſt the illegal practices above mentioned, and his majeſty's royal proclamation of the ſecond day of *February*, which was in the year of our lord one thouſand ſeven hundred and twenty-two, notifying the ſame, many wicked and evil diſpoſed perſons have, in open defiance thereof, been guilty of ſeveral of the offences before mentioned, to the great diſturbance of the publick peace, and damage of divers of his majeſty's good ſubjects; it is hereby enacted by the authority aforeſaid, That all and every perſon and perſons, who ſince the ſecond day of *February* in the year of our lord one thouſand ſeven hundred and twenty-two, have committed or been guilty of any of the offences aforeſaid, who ſhall not ſurrender him, her, or themſelves, before the twenty-fourth day of *July* in the year of our lord one thouſand ſeven hundred and twenty-three, to any of the juſtices of his majeſty's court of king's bench,

or to any of his majeſty's juſtices of the peace, in and for the county where he, ſhe, or they did commit ſuch offence or offences, and voluntarily make a full confeſſion thereof to ſuch juſtice, and a true diſcovery upon his, her, or their oath or oaths, of the perſons who were his, her, or their accomplices in any of the ſaid offences, by giving a true account of their names, occupations, and places of abode, and to the beſt of his, her, or their knowledge or belief, diſcover where they may be found, in order to be brought to juſtice, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy.

Perſons guilty ſurrendring themſelves, and making diſcovery, &c. ſhall be pardoned.

3. Provided nevertheleſs, That all and every perſon and perſons, who have been guilty of any the offences aforeſaid, and ſhall not be in lawful cuſtody for ſuch offence on the ſaid firſt day of *June*, and ſhall ſurrender him, her, or themſelves, on or before the ſaid twenty-fourth day of *July*, as aforeſaid, and ſhall make ſuch confeſſion and diſcovery, as aforeſaid, ſhall by virtue of this act be pardoned, acquitted, and diſcharged of and from the offences ſo by him, her, or them confeſſed, as aforeſaid; any thing herein contained to the contrary in any wiſe notwithſtanding.

4. And for the more eaſy and ſpeedy bringing the offenders againſt this act to juſtice, Be it enacted by the authority aforeſaid, That if any perſon or perſons ſhall be charged with being guilty of any of the offences aforeſaid, before any two or more of his majeſty's juſtices of the peace of the county where ſuch offence

or offences were or ſhall be committed, by information of one or more credible perſon or perſons upon oath by him or them to be ſubſcribed, ſuch juſtices before whom ſuch information ſhall be made, as aforeſaid, ſhall forthwith certify under their hands and ſeals, and return ſuch information to one of the principal ſecretaries of ſtate of his majeſty, his heirs, or ſucceſſors, who is hereby required to lay the ſame, as ſoon as conveniently may be, before his majeſty, his heirs, or ſucceſſors, in his or their privy council; whereupon it ſhall and may be lawful for his majeſty, his heirs, or ſucceſſors, to make his or their order in his or their ſaid privy council, thereby requiring and commanding ſuch offender or offenders to ſurrender him or themſelves, within the ſpace of forty days, to any of his majeſty's juſtices of the court of king's bench, or to any one of his majeſty's juſtices of the peace, to the end that he or they may be forthcoming, to anſwer the offence or offences wherewith he or they ſhall ſo ſtand charged according to due courſe of law: which order ſhall be printed and publiſhed in the next *London Gazette*, and ſhall be forthwith tranſmitted to the ſheriff of the county, where the offence ſhall be committed, and ſhall, within ſix days after the receipt thereof, be proclaimed by him, or his officers, between the hours of ten in the morning, and two in the afternoon, in the market places, upon the reſpective market-days, of two market-towns in the ſame county, near the place where ſuch offence ſhall have been committed, and a true copy of

Informations to be certified by the juſtices to a ſecretary of ſtate, who is to lay the ſame before his majeſty in council, who may order the offenders to ſurrender in 40 days, otherwiſe guilty of felony.

ſuch order ſhall be affixed upon ſome publick place in ſuch market-towns; and in caſe ſuch offender or offenders ſhall not ſurrender him or themſelves, purſuant to ſuch order of his majeſty, his heirs, or ſucceſſors, to be made in council, as aforeſaid, he or they, ſo neglecting or refuſing to ſurrender him or themſelves, as aforeſaid, ſhall from the day appointed for his or their ſurrender, as aforeſaid, be adjudged, deemed, and taken to be convicted and attainted of felony, and ſhall ſuffer pains of death, as in caſe of a perſon convicted and attainted by verdict and judgment of felony, without benefit of clergy; and that it ſhall be lawful to and for the court of king's bench, or the juſtices of *Oyer* and *Terminer*, or general gaol delivery for the county, where the offence is ſworn in ſuch information to have been committed, upon producing to them ſuch order in council, under the ſeal of the ſaid council, to award execution againſt ſuch offender and offenders, in ſuch manner, as if he or they had been convicted and attainted in the ſaid court of king's bench, or before ſuch juſtices of *Oyer* and *Terminer*, or general gaol delivery reſpectively.

Concealers & abettors of perſons not ſurrendering guilty of felony.

5. And be it enacted by the authority aforeſaid, That all and every perſon and perſons, who ſhall, after the time appointed, as aforeſaid, for the ſurrender of any perſon or perſons, ſo charged upon oath with any the offences aforeſaid, be expired, conceal, aid, abet, or ſuccour, ſuch perſon or perſons, knowing him or them to have been ſo charged, as aforeſaid, and to have been required to ſurrender him or themſelves, by ſuch order or

orders, as aforeſaid, being lawfully convicted thereof, ſhall be guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy.

Nevertheleſs any judge, juſtice, &c. may apprehend offenders ſo ordered to ſurrender.

6. Provided nevertheleſs, and it is hereby declared and enacted, That nothing herein contained ſhall be conſtrued to prevent or hinder any judge, juſtice of the peace, magiſtrate, officer, or miniſter of juſtice whatſoever, from taking, apprehending, and ſecuring ſuch offender or offenders, againſt whom ſuch information ſhall be given, and for requiring whoſe ſurrender ſuch order in council ſhall be made, as aforeſaid, by the ordinary courſe of law; and in caſe ſuch offender or offenders, againſt whom ſuch information, and for requiring whoſe ſurrender ſuch order in council ſhall be made, as aforeſaid, ſhall be taken and ſecured, in order to be brought to juſtice before the time ſhall be expired, within which he or they ſhall be required to ſurrender him or themſelves, by ſuch order in council, as aforeſaid, that then in ſuch caſe no further proceedings ſhall be had upon ſuch order made in council againſt him or them ſo taken and ſecured, as aforeſaid, but he or they ſhall be brought to trial by due courſe of law; any thing herein before contained to the contrary in any wiſe notwithſtanding.

Inhabitants of hundreds to make ſatisfaction for damages ſuſtained by killing of cattle, &c.

7. And be it enacted by the authority aforeſaid, That from and after the firſt day of *June* one thouſand ſeven hundred and twenty-three, the inhabitants of every hundred, within that part of the kingdom of *Great Britain* called *England*, ſhall make full ſatisfaction and amends to all and every the perſon and perſons,

their executors and adminiſtrators, for the damages they ſhall have ſuſtained or ſuffered by the killing or maiming of any cattle, cutting down or deſtroying any trees, or ſetting fire to any houſe, barn, or out-houſe, hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood, which ſhall be committed or done by any offender or offenders againſt this act; and that every perſon and perſons, who ſhall ſuſtain damages by any of the offences laſt mentioned, ſhall be and are hereby enabled to ſue for and recover ſuch his or their damages (the ſum to be recovered not exceeding the ſum of two hundred pounds) againſt the inhabitants of the ſaid hundred, who by this act ſhall be made liable to anſwer all or any part thereof; and that if ſuch perſon or perſons ſhall recover in ſuch action, and ſue execution againſt any of ſuch inhabitants, all other the inhabitants of the hundred, who by this act ſhall be made liable to all or any part of the ſaid damage, ſhall be ratably and proportionably taxed, for and towards an equal contribution for the relief of ſuch inhabitants, againſt whom ſuch execution ſhall be had and levied; which tax ſhall be made, levied, and raiſed, by ſuch ways and means, and in ſuch manner and form, as is preſcribed and mentioned for the levying and raiſing damages recovered againſt inhabitants of hundreds in caſes of robberies, in and by an act, intituled, *An act for the following Hue and Cry*, made in the twenty-ſeventh year of the reign of queen *Elizabeth*.

8. Provided nevertheleſs, That no perſon or perſons ſhall be enabled to recover any damages by virtue of this act, unleſs he, or they, by themſelves, or by their ſervants, within two days after ſuch damage or injury done him or them by any ſuch offender or offenders, as aforeſaid, ſhall give notice of ſuch offence done and committed unto ſome of the inhabitants of ſome town, village, or hamlet near unto the place where any ſuch fact ſhall be committed, and ſhall, within four days after ſuch notice, give in his, her, or their examination upon oath, or the examination upon oath of his, her, or their ſervant or ſervants, that had the care of his or their houſes, out-houſes, corn, hay, ſtraw, or wood, before any juſtice of the peace, of the county, liberty, or diviſion, where ſuch fact ſhall be committed, inhabiting within the ſaid hundred where the ſaid fact ſhall happen to be committed, or near unto the ſame, whether he or they do know the perſon or perſons, that committed ſuch fact, or any of them; and if upon ſuch examination it be confeſſed, that he or they do know the perſon or perſons, that committed the ſaid fact, or any of them, that then he or they ſo confeſſing ſhall be bound by recognizance to proſecute ſuch offender or offenders by indictment, or otherwiſe, according to the laws of this realm.

No damages to be recovered, unleſs notice be given of the offence in two days.

9. Provided alſo, and be it further enacted by the authority aforeſaid, That where any offence ſhall be committed againſt this act, and any one of the ſaid offenders ſhall be apprehended, and lawfully convicted of ſuch offence

Hundred not liable, if one of the offenders be convicted in Six months.

fence, within the ſpace of ſix months after ſuch offence committed, no hundred, or any inhabitants thereof, ſhall in any wiſe be ſubject or liable to make any ſatisfaction to the party injured, for the damages he ſhall have ſuſtained; any thing in this act to the contrary notwithſtanding.

Action to be commenced in one year after the offence.

10. Provided alſo, That no perſon, who ſhall ſuſtain any damage by reaſon of any offence to be committed by any offender contrary to this act, ſhall be hereby enabled to ſue, or bring any action againſt any inhabitants of any hundred, where ſuch offence ſhall be committed, except the party or parties ſuſtaining ſuch damage ſhall commence his or their action or ſuit within one year next after ſuch offence ſhall be committed.

Juſtices may authorize conſtables, &c. to enter houſes to ſearch for veniſon, &c.

11. And for the better and more effectual diſcovery of the offenders above mentioned, and bringing them to juſtice, Be it enacted by the authority aforeſaid, That it ſhall and may be lawful to and for any juſtice of the peace, to iſſue his warrant to any conſtable, headborough, or other peace officer, thereby authorizing ſuch conſtable, headborough, or other peace officer, to enter into any houſe, in order to ſearch for veniſon, ſtolen or unlawfully taken, contrary to the ſeveral ſtatutes againſt deer ſtealers, in ſuch manner, as by the laws of this realm ſuch juſtice of the peace may iſſue his warrant to ſearch for ſtolen goods.

12. And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall apprehend, or cauſe to be convicted, any of the offenders above mentioned, and ſhall be

killed or wounded, ſo as to loſe an eye, or the uſe of any limb, in apprehending or ſecuring, or endeavouring to apprehend or ſecure any of the offenders above mentioned, upon proof thereof made at the general quarter ſeſſions of the peace for the county, liberty, diviſion, or place, where the offence was or ſhall be committed, or the party killed, or receive ſuch wound by the perſon or perſons ſo apprehending, and cauſing the ſaid offender to be convicted, or the perſon or perſons ſo wounded, or the executors or adminiſtrators of the party killed, the juſtices of the ſaid ſeſſions ſhall give a certificate thereof to ſuch perſon or perſons ſo wounded, or to the executors or adminiſtrators of the perſon or perſons ſo killed, by which he or they ſhall be intitled to receive of the ſheriff of the ſaid county the ſum of fifty pounds, to be allowed the ſaid ſheriff in paſſing his accounts in the exchequer; which ſum of fifty pounds the ſaid ſheriff is hereby required to pay within thirty days from the day on which the ſaid certificate ſhall be produced and ſhewn to him, under the penalty of forfeiting the ſum of ten pounds to the ſaid perſon or perſons to whom ſuch certificate is given; for which ſaid ſum of ten pounds, as well as the ſaid ſum of fifty pounds, ſuch perſon may and is hereby authorized to bring an action upon the caſe againſt ſuch ſheriff, as for money had and received to his or their uſe.

Executors of perſons killed, or perſons wounded in apprehending offenders, ſhall have a reward of 50l.

To be paid by the ſheriff in 30 days, on penalty of 10l.

13. And whereas the ſhortneſs of the time, within which proſecutions for offences againſt

Proſecution for offences againſt 3 & 4 W. & M. c. 10. may be commenced within 3 years.

the ſtatute made in the third and fourth years of the reign of their late majeſties king *William* and queen *May*, intituled, *An act for the more effectual diſcovery and puniſhment of deer ſtealers*, are limited to be commenced, has been a great encouragement to offenders; Be it therefore enacted by the authority aforeſaid, That any proſecution for any offence againſt the ſaid ſtatute ſhall or may be commenced within three years, from the time of the offence committed, but not after.

Offences againſt this act may be tried in any county.

14. And for the better and more impartial trial of any indictment or information, which ſhall be found commenced or proſecuted for any the offences committed againſt this act, Be it enacted by the authority aforeſaid, That every offence, that ſhall be done or committed contrary to this act, ſhall and may be enquired of, examined, tried, and determined in any county within that part of the kingdom of *Great Britain* called *England*, in ſuch manner and form, as if the fact had been therein committed: Provided, That no attainder for any of the offences made felony by virtue of this act, ſhall make or work any corruption of blood, loſs of dower, or forfeiture of lands or tenements, goods or chattels.

but no attainder ſhall work corruption of blood, &c.

This act to be read in ſeſſions and leets.

15. And be it further enacted by the authority aforeſaid, That this act ſhall be openly read at every quarter-ſeſſions, and at every leet or law day.

To continue for 3 years, &c.

16. And be it further enacted by the authority aforeſaid, That this act ſhall continue in force from the firſt day of *June* one thouſand ſeven hundred and twenty-three, for the

ſpace of three years, and from thence to the end of the then next ſeſſion of parliament, and no longer.

17. And be it further enacted by the authority aforeſaid, That if any veniſon, or ſkin of any deer, ſhall be found in the cuſtody of any perſon or perſons, and it ſhall appear that ſuch perſon or perſons bought ſuch veniſon or ſkin of any one, who might be juſtly ſuſpected to have unlawfully come by the ſame, and does not produce the party of whom he bought it, or prove upon oath the name and place of abode of ſuch party, that then the perſon or perſons who bought the ſame, ſhall be convicted of ſuch offence, by any one or more juſtice or juſtices of the peace, and ſhall be ſubject to the penalties inflicted for killing a deer, in and by the ſtatute made in the third and fourth year of the reign of their late majeſties, king *William* and queen *Mary* intitled, *An act for the more effectual diſcovery and puniſhment of deer ſtealers.* Continued by 12 *Georgii*, *cap.* 30. and further continued by 6 *Geo.* 2. *cap.* 37. made perpetual by 31 *Geo.* 2. *c.* 42.

Perſons in whoſe cuſtody veniſon, &c. is found, not producing the party of whom bought, &c. liable to penalties for killing a deer by ſtat. 3 & 4 W. & M. c. 10.

Stat. 10 *Geo.* 2. *c.* 32. *ſect.* 7.

AND whereas ſeveral wicked and diſorderly perſons armed with fire-arms, ſwords, ſtaves, flails, or other offenſive weapons, have frequently entered into ſeveral of his majeſty's foreſts and chaſes, and into the chaſes of ſeveral of his majeſty's ſubjects, and there unlawfully hunted, taken, and killed great numbers of deer, and alſo many times violently aſſaulted, beat, and wounded the keepers or officers of ſuch foreſts, chaſes, and alſo of parks, to the great damage and terror of many of his majeſty's peaceable ſubjects: And whereas the ſaid act [9 *Geo.* 1. *c.* 22.] does not extend to the unlawful courſing, hunting, taking in toils, killing, wounding, or taking away any red or fallow deer fed, or kept in open foreſts, or chaſes where deer are uſually kept, but only to ſuch as are incloſed with pales, rails, or other fences; and ſuch offences in unincloſed places are only puniſhable by the ſtatute made in the third and fourth years of king *William* and queen *Mary*, and which inflicts only a pecuniary penalty for ſo doing, whereby ſuch wicked and diſorderly perſons are the more emboldened to commit ſuch offences therein, and it is become neceſſary to make ſome further proviſion for the prevention thereof; Be it therefore enacted, &c. That if any perſon or perſons, who ſhall hereafter be convicted of unlawfully courſing, hunting, taking in toils, killing, wounding, or taking any red or fallow deer in any open or unincloſed foreſt or chaſe where deer are uſually kept, ſhall during the continuance of the ſaid act of the ninth year of his late majeſty, be guilty of a ſecond offence of the like nature, and ſhall be thereof lawfully convicted upon indictment or information, ſuch perſon or perſons ſhall by judgment of the court wherein he or they ſhall be ſo convicted, be tranſported to one of his majeſty's plantations in *America* for the ſpace of Seven years, in

Perſons convicted a ſecond time of hunting, and taking away of deer out of unincloſed foreſts or chaſes, to be tranſported.

in like manner as other offenders may be tranſported by the laws now in force; and if ſuch perſon or perſons ſhall return into any part of *Great Britain*, or *Ireland*, within the ſaid Seven years, every ſuch perſon or perſons ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony without benefit of clergy.

Sect. 8. And to the intent that ſuch conviction may be with as little trouble and expence as poſſible, Be it further enacted by the authority aforeſaid, That ſuch offender or offenders ſhall and may be tried for every ſuch ſecond offence as aforeſaid before the juſtices of aſſize, *Oyer* and *Terminer*, or gaol-delivery, of and for that county, city, or place, where ſuch ſecond offence ſhall be ſo done and committed, and that the juſtice or juſtices of the peace before whom ſuch offender or offenders was or were convicted of ſuch firſt and former offence, ſhall certify a true copy of ſuch conviction, under his or their hands and ſeals to the quarter-ſeſſions of the county, wherein ſuch firſt offence was committed, to be held next after ſuch conviction had, there to be kept amongſt the records of ſuch quarter-ſeſſions; and the clerk of the peace of ſuch county ſhall at the requeſt of the proſecutor, or any other in his majeſty's behalf certify a tranſcript under his hand and ſeal, briefly and in few words containing the effect and tenor of the firſt and former conviction of ſuch offender, or offenders; which certificate being produced in court ſhall be a ſufficient proof that ſuch offender or offenders hath or have been before convicted of and for ſuch firſt and former oftence.

Perſons armed coming into a foreſt with an intention to ſteal deer, and beating and wounding the keepers, to be tranſported.

Sect. 9. And be it further enacted by the the authority aforeſaid, That if any perſon or perſons armed as aforeſaid, ſhall come into any foreſt, chaſe, or park, wherein deer are uſually kept (be the ſame incloſed, or not incloſed) with an intent to courſe, hunt, take in toils, kill, wound, or take away any red or fallow deer, and ſhall there unlawfully beat or wound any keeper or keepers, page or pages of any ſuch foreſt, chaſe, or park, where deer are uſually kept, their ſervants or aſſiſtants, in the execution of his or their office or offices, and be thereof lawfully convicted; every ſuch perſon or perſons ſhall be tranſported to one of his majeſty's plantations in *America* for the ſpace of Seven years, in the manner as other offenders may be tranſported by the laws now in force; and if ſuch perſon or perſons ſhall return into any part of *Great Britain* or *Ireland* within the ſaid Seven years, every ſuch perſon or perſons ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony without benefit of clergy.

Stat. 28 *Geo.* 2. *c.* 19. *ſect.* 3.

WHEREAS the burning and deſtroying of goſs, furze and fern, in and upon foreſts and chaſes, as it is frequently done by divers diſorderly and diſſolute perſons, doth not only deſtroy the cover neceſſary for the preſervation of the deer and game there, but hath alſo been the occaſion of burning, damaging and deſtroying of great quantities of timber, young ſprings of wood and underwood and fences, within the ſaid foreſts and chaſes, and places thereunto adjacent, to the great damage and prejudice of the owners and proprietors thereof; and the laws now in being are not ſufficient to prevent the ſame; Be it enacted, *&c.* That if any perſon or perſons not having a right or legal licence to do the ſame, ſhall ſet fire to, burn, or deſtroy, or ſhall abet, aid, or aſſiſt in, or at the burning or deſtroying of any goſs, furze, or fern, growing, or being in or upon any foreſt or chaſe, within that part of *Great Britain* called *England*, without the licence or conſent of the owner or proprietors, or the perſon chiefly intruſted with the care, overſight, and cuſtody of ſuch foreſt or chaſe, or ſome part thereof, and being brought before juſtice or juſtices of the peace for the county, riding, diviſion, or place, where ſuch foreſt or chaſe ſhall lie, and ſhall be thereof convicted by confeſſion, or upon the oath of one or more credible witneſs or witneſſes (which oath ſuch juſtice or juſtices is and are hereby impowered to adminiſter) or upon the view of ſuch juſtice or juſtices; every ſuch perſon or perſons being ſo convicted, ſhall for every ſuch offence forfeit and pay any ſum not exceeding five pounds, nor leſs than forty ſhillings; one moiety thereof to the informer, and the other moiety to the uſe of the poor of the pariſh where the offence ſhall be committed; which penalty, in caſe the ſame be not forthwith paid, ſhall and may be levied by diſtreſs and ſale of the offender's goods and chattels, by warrant or warrants under the hand and ſeal or hands and ſeals of ſuch juſtice or juſtices; and in caſe no ſufficient diſtreſs can be found, then it ſhall and may be lawful for ſuch juſtice or juſtices to commit ſuch offender or offenders to the common gaol of the county or place where ſuch offence ſhall be committed, for any time not exceeding three months, nor leſs than one month.

[*Adjudged caſes relating to deer.*]

The deſcription of a place *where deer have been uſually kept* in 3 Will.& Ma. c. 10. does not refer to the words, foreſt, chaſe, &c.

THERE were five ſeveral convictions for deer-ſtealing returned, four of which being either for killing, or aiding in killing deer, in *Waltham* foreſt, had no objections made to them that are worth taking notice of; but as to the fifth, which was for deer-ſtealing in a *Purlieu* of the foreſt, it was objected, That it was not averred, that deer were uſually kept in the *purlieu*, but only that they were uſually kept in the foreſt, whereas by 3 *W.* & *M.* *c.* 10. that ſeems to be required. The clauſe is, [ſee page 60.] " If any perſon ſhall unlawfully courſe, &c. any red or fallow deer in any foreſt, chaſe *purlieu*, paddock, wood, park, *or other ground incloſed*, *where deer have or ſhall be uſually kept*, without the conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein, and ſhall be convicted thereof, he ſhall forfeit, &c." To this it was anſwered by Mr. Solicitor general, that ſuch averment could not extend to a *purlieu*, for 4 *Inſt.* 303. deſcribes it as a place where by law deer cannot be kept, it being diſafforeſted as well with regard to all others as the owner, and the oath of the ranger, 304. is to drive deer out of the *purlieu* into the foreſt. *Manwood* 292. Secondly, the averment as to foreſts, chaſes, and *purlieus*, is not made neceſſary by the act, for the words *where deer are uſually kept* extend only to ground incloſed; elſe the words *other ground* will make it neceſſary to aver that the foreſt, &c. was incloſed, which is not the caſe in any part of *England*.

Et per curiam, the anſwer is right in both reſpects.

Another objection was, that it did not appear, but that the defendant was owner of the *purlieu*; in which caſe he had a right to chaſe the deer out of his ground. *Sed per curiam*, that would be matter of defence, and ſhould be ſhewn on his part, according to the reſolution in the caſe of *The king* v. * *Bryan*, ſo the con-

---

* This caſe is reported in ſtrange 1101. as follows: The defendant was convicted on the Gin act, and an exception was taken, that there was no averment, that it was not ſold to be uſed in medicine; and the caſes on the game act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game.

Strange contra inſiſted, that the reaſon of that was becauſe thoſe were in the enacting clauſe, whereas conviction was confirmed. *Mich.* 13 *Geo.* 2. *Dominus Rex* v. *Calcutt et Monk*, *Strange* 1119.

In ſummary convictions forms may be diſpenſed with.

The defendant was convicted for deer-ſtealing by a juſtice of the peace upon 3 & 4 *Will.* & *Mar. cap.* 10. [ſee page 59.] and the conviction was removed into this court by *certiorari.* And ſeveral exceptions were taken at ſeveral days, and argued. And after it had depended ſeveral terms, this term the court over-ruled the exceptions, and held the conviction good. *Holt* pronouncing the opinion of the court, ſaid, that the caſe did not deſerve to be argued. He ſaid, that in theſe convictions by juſtices of peace in a ſummary way, where the antient courſe of proceeding by indictment and trial by jury is diſpenſed with, the court may more eaſily diſpenſe with forms; and it is ſufficient for the juſtices, in the de-

---

whereas this about medicine comes in by way of proviſo, and is by way of defence to be ſhewn on the defendant's part. And for that purpoſe he cited *Mich.* 11 *Geo.* 1. *Rex* v. *Theed*; where in a conviction for obſtructing an exciſe officer on 8 *An. c.* 9. it was objected, that it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but held well, and its being in the night, ſhould have been ſhewn on defendant's part. *Et per curiam*, This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. The conviction was confirmed. *Mich.* 12 *Geo.* 2. *King* and *Bryan*, *Str.* 1101.

ſcription of the offence, to purſue the words of the ſtatute, and they are not confined to the legal forms requiſite in indictments for offences by the Common Law. For though all acts, which ſubject men to new and other trials, than thoſe by which they ought to be tried by the Common Law, being contrary to the rights and liberties of *Engliſhmen*, as they were ſettled by *Magna Charta*, ought to be taken ſtrictly; yet when ſuch a ſtatute is made, one ought to purſue the intent of the makers, and expound it in ſo reaſonable a manner, as that it may be executed. But it is alſo incumbent upon judges, to take great care, that in the execution of this law they do not go beyond the act of parliament. As to the firſt exception, that it is ſaid, that the defendant between the firſt of *July* and the tenth of *September* killed ten deer, without ſhewing the particular days upon which they were killed, and ſo general and uncertain a declaration of an offence is very ſevere, becauſe it drives the defendant to give an account of all his life, which he cannot poſſibly be prepared to do. There is an indictment in *Weſt's Prec.* 110. *b.* *&c.* for killing a buck, and there not only the day, but alſo the hour, is ſhewn, and theſe convictions, to which a man cannot have anſwer, ought to be as certain as indictments, to which a man may plead. But to this exception the counſel of the other ſide anſwered, that the days were not material to be proved; for evidence may be given of the facts of any other days, and therefore the omiſſion of ſhewing them will not vitiate; and all that is neceſſary to be laid in point of time is, that the proſecution appear to have been made within a year after the fact committed; that the omiſſion of the days is not any inconvenience to the defendant, becauſe if he can ſhew an authority for killing ſo many as are charged upon him in the ſame time, it will drive the proſecutor to prove more; and if he be charged another time, he may aver, that thoſe for the killing of which he has been convicted are the ſame. And the caſe of *Farrow* v. *Chevalier* was cited to this purpoſe, [*Strange*, 478.] where the ſame exception was taken in arreſt of judgment, and over-ruled; and many precedents were cited, to warrant this manner of ſhewing ſeveral facts in informations upon penal ſtatutes. *Raſt. Intr.* 410. *Hearn. Plead.* 549. *Winch* 541, 547. *Thomſ. Entr.* 91, 92. *Brown. Form. plac.* 1 *par.* 250, 1, 2, 47, 9, 260. *Vid.* 186. *Co. Entr.* 158.

Holt chief juſtice, that in the caſe of *Farrow* and *Chevalier* there is but one breach of covenant, and the ſelling there ſeveral times was only in aggravation of damages, but the damages ought to be intire. This caſe differs from all caſes of indictments and informations for offences at Common Law. All that is neceſſary in theſe caſes of new offences made by new ſtatutes, and in new ſummary methods of conviction by them, is to ſhew ſuch a fact as is within the deſcription of the ſtatute, and to deſcribe it as the ſtatute wills.

2. A ſecond exception was, that the conviction was, *Memorandum quod octavo die Maii* the tenth of this king, *apud Enfield in comitatu Middleſex venit coram me et dat mihi intelligi et informari, quod, &c. et ſuperinde eodem octavo die Maii anno ſupradicto apud domum meam in parochia ſancti Andreæ Holborne in comitatu Middleſex prædicto venit prædictus et dicit, deponit et jurat quod, &c.* where it ſhould have been *dedit*; becauſe *dat* in the preſent tenſe relates to the time of compleating the record; and it was impoſſible, that the informer could give information at *Enfield*, when he was at his houſe in *Holbourn* where the conviction was made. To which it was anſwered by the counſel of the other ſide, and agreed by the court; that it muſt be intended ſucceſſively, the one after the other as the facts might be performed, and not immediately; for the juſtice might take the information at *Enfield*, and come afterwards to *Holbourn*, and make the conviction. 3. A third exception was, that the judgment was *quod forisfaciat* only, whereas it ought to be, *ideo conſideratum eſt*; *ſed non allocatur*; for *per curiam*, it is well enough without it. 4. Objection, that the conviction is, that the defendant killed the deer *ſine conſenſu domini regis proprietarii damarum*, and not *adtunc proprietarii*; *ſed non allocatur*, becauſe it is, that he killed them *ſine conſenſu domini regis* (as before) *et adtunc et antea et poſtea proprietarii chaſeæ prædictæ, aut alicujus alius perſonæ præcipue fiduciatæ, Anglice*, intruſted, *cum cuſtodia damarum prædictarum*; which ſufficiently ſhews, that it was

an unlawful killing. 5. Objection, That *contra pacem* is omitted in the conviction. *Sed non allocatur*; for per *Holt* chief juſtice, in indictments and informations one ought to conclude *contra pacem*; but in theſe ſummary convictions, there is no need to purſue ſo ſtrictly the forms of law, and they are well enough without *contra pacem*. *Trin.* 12 *Will.* 3. *Rex* v. *Chandler*, Lord *Raym.* 581.

Killing deer where there is a pretence of right, is not within the act againſt deer-ſtealing.

Exception was taken to this conviction for deer-ſtealing, that the facts are laid at ſeveral diſtinct days, and then at the end comes *illicite occidit*; and ſo it did not extend to them all. But *per curiam* it is one intire ſentence, and then the *illicite occidit* will extend to every one of them, as well as if it had been repeated particularly. Afterwards another exception was taken, that *illicite occidit* is not ſufficient, but they ought to ſay *furtive*, or *cum animo furandi*, or ſomething reſembling it; for every unlawful killing is not within the act. But per *Holt* chief juſtice, if there is a pretence of right, we ought to ſuppoſe, that the juſtice would do right, and acquit the defendant: becauſe he is intruſted with the execution of the law. The intent of the act was, to prevent killing in a clandeſtine manner by ſtealth, but it is enough to lay the fact in the words of the act of parliament, and that ought to be admitted upon evidence. The title of the act is, againſt deer-ſtealers, but there is not any ſuch word in the body of the act, and therefore if there was a diſpute concerning the limits of a walk in a foreſt; and one claims as part of his walk, what is in fact part of the diviſion of another, and accordingly kills deer there; the caſe is out of the intent of the act, but is plainly within the words. The intent of the act was, to puniſh rogues and vagabonds, and not puniſh perſons, who by miſtake in the execution of their truſts exceed what the law warrants. If the keeper of a walk gives leave to a third perſon to kill a deer; though this licence does not give ſufficient authority to the third perſon to kill it, yet it will not be an unlawful killing within the ſtatute, becauſe there is a colour of right. Another exception was, becauſe it is not ſhewn, how he killed; *ſed non allocatur*, becauſe the killing or not is the material part. And *Holt* chief juſtice ſaid in this caſe, That if a conviction was affirmed in this court, this court might award a *levari facias*; but if the defendant hath no goods, he made a queſtion, if they could impriſon him. Both theſe convictions were affirmed. *Trin.* 12 *W.* 3. *Rex* v. *Speed*, Ld. *Raym.* 524.

A man convict upon the ſtatute of deer-ſtealing cannot be committed, if he hath ſufficient diſtreſs.

Chandler was brought into court upon a *habeas corpus*, to which the warrant of his commitment was returned; and upon two exceptions taken to his commitment, he was diſcharged. The firſt was, that it did not appear ſufficiently that the defendant had not ſufficient diſtreſs (he being committed upon a conviction upon the new act of deer-ſtealing) and therefore it was ill; for if he had ſufficient diſtreſs, the juſtices of peace had not any power to commit him to priſon; but the warrant of commitment only recited, that *Chandler* of the pariſh of *Hadley* in the county of

Middleſex was convict, *&c.* and becauſe that he did not pay the forfeiture, the juſtice iſſued his warrant, directed to all conſtables, *&c.* to require them to levy the forfeiture by diſtreſs, *&c.* and that the conſtable of *South Mims* in the ſaid county had made return, that the defendant had no goods in *Hadley*, theſe are therefore, *&c.* And *per Holt* and *Gould* juſtice, the act of parliament is not purſued, for the return of the conſtable is nothing to the purpoſe. Indeed, a warrant is appointed by the ſtatute to be iſſued and returned; but the ſtatute [3 & 4 *Will. & Ma. c.* 10. See p. 62.] does not ſay, that upon the return to the warrant, that he has not ſufficient diſtreſs, he ſhall ſuffer impriſonment, *&c.* but that for want of diſtreſs he ſhall ſuffer impriſonment, *&c.* and therefore if there is no diſtreſs, nor the pecuniary penalty paid, the remedy for that ceaſes, and the offender ought to ſuffer another puniſhment, and judgment ought to be given for that, and there ought to be more than a bare commitment. If the party was preſent, as in this caſe, upon the conviction, the juſtice ought to adjudge that he ſhould pay the money as the act appoints, and then he ought to detain him for two days, to diſcover if he hath ſufficient diſtreſs; and if it appears, that he hath not, then he ought to record it, and give judgment that he ſhall ſuffer impriſonment, and commit him preſently. But if the party was not preſent, then he ought to proceed in this manner. Firſt, he ought to iſſue his warrant for levying the money by diſtreſs, and if it appear to him by the return of the warrant, that there is not ſufficient diſtreſs, then he ought to record that he hath no diſtreſs, and therefore award that he ſhall be committed, *&c.* and upon that iſſue his warrant. But a man ought not to continue in priſon upon a bare recital in a warrant without any adjudication. There ought to be a judicial determination, where ſuch informer's puniſhment is to be inflicted. It is ſaid in 8 *Co.* 120. *a.* Dr. *Bonham*'s caſe, that there ought to be a record made of it. But *Turton* juſtice was of opinion, that the iſſuing of the warrant in this caſe is well enough, and ſo the commitment good upon the return of no diſtreſs. 2. The ſecond exception was, that the conſtable of *South Mims* could not return a matter of fact done in *Hadley*, becauſe it was out of his juriſdiction. And the whole court was of that opinion. For *per Holt* chief juſtice, if a ſtatute directs a thing to be done by a conſtable, that will give them juriſdiction over the limits of their pariſhes. So if a juſtice of peace directs his warrant to a particular conſtable, he may execute it out of his pariſh. But where a warrant is directed generally, to all conſtables, *&c.* it ſhall be taken reſpectively, each of them within their ſeveral diſtricts; and not the conſtable of one pariſh, to take a diſtreſs in another pariſh. For where a precept or warrant is directed to men by the name of their office, it is confined to the diſtricts in which they are officers; and therefore, the conſtable of *South Mims* could not return this fact in *Hadley*.

To all which *Gould* juſtice agreed; and he ſaid, that the return of the warrant by the conſtable of the pariſh where he lived might have been ſufficient to the juſtice of peace, to ground his adjudication upon it. Mr. *Northey* ſtarted an objection, that the conviction ought to be quaſhed, before the defendant could be diſcharged; for though in a writ of execution the judgment is ſhewn (which has no need to be ſhewn there) and errors appear in it, yet the execution is good, until the judgment be reverſed. So though errors appear in this conviction, *&c.* and alſo the court will not take notice of the conviction, becauſe it need not be ſhewn. But *Holt* chief juſtice ſaid he doubted of that, for in *Buſhell's* caſe in *Vaughan*, the jury were fined, becauſe they gave a verdict againſt evidence, and were committed in execution for it in court, which was a judgment; and yet they were diſcharged in the common pleas, though the record of the conviction was not before them. He ſaid, he always believed it a ſtrong objection. But they agreed clearly in *Buſhell's* caſe, that if it had been a conviction upon a verdict, they could not have diſcharged *Buſhell* out of execution, until the judgment had been reverſed by error. But this point was not afterwards moved. *Hil.* 11 *Will.* 3. *Rex* v. *Chandler*, Lord *Raym.* 545.

An indictment for not returning two juſtices warrant for levying a forfeiture on conviction of deer-ſtealing.

The defendant was indicted at the aſſizes at *Suſſex*. And the indictment ſet forth, that whereas one *Thomas Naſh*, 28th *Auguſt* 13 *Will.* 3. was convicted before two juſtices of peace upon the information of one *W. M.*

and upon oath of *R. H.* of being aiding and aſſiſting to one *E. R.* in the unlawful killing of five deer upon the 11th of *April* then laſt paſt, in the park of Sir *W. M.* And whereas the ſame *T. N.* on the 28th of *Auguſt* was convicted before the ſame juſtices upon the information of the ſame *W. M.* and upon the oath of the ſame *R. H.* of being aiding and aſſiſting to the ſaid *R. H.* in the unlawful killing of two deer upon the 8th of *July* then laſt paſt, in the park of *M. M.* and *C. M.* and whereas the ſaid two juſtices afterwards, *viz.* the 2d of *September* in the ſaid year, at *Arundel* in the county of *Suſſex*, make a warrant under their hands and ſeals, directed to all conſtables, headboroughs, and other officers of the ſaid late king, within the ſaid county, to levy by way of diſtreſs of goods and chattels of the aforeſaid *T. N.* five ſeveral ſums of 30*l.* amounting in the whole to 150*l.* by him forfeited for the firſt mentioned offence, *et quod ipſe vel eorum aliqui retornam facerent, vel eorum aliquis retornam faceret, præfatis juſticiariis vel eorum uni ad certum diem abhinc longe præteritum in eodem warranto mentionatum qualiter warrantum illud fecerint excecutum*; and then ſets out in the ſame manner another warrant on the ſecond conviction; which ſeveral warrants *poſtea, ſcilicet,* 2 *Septembris anno ſupradicto*, were delivered to one *Richard Wyatt*, then being one of the conſtables of the hundred of *A.* in the ſaid county, *viz.* apud *Felpham prædictam in comitatu prædicta* to be executed: the ſaid *Wyatt* afterwards, *viz.* the ſaid 2d. of *September*,

ber, at *Walburton* in the ſaid county, and within the ſaid hundred, by virtue of the ſaid ſeveral warrants, levied the money of the goods of *Naſh*; yet the ſaid *Wyatt*, the ſaid 2d *September anno ſupradicto*, *ſeu unquam poſtea* to the taking of the indictment *non fecit*, *nec fieri cauſavit*, *præfatis* the juſtices *ſeu eorum alteri*, *aliquam retornam* of the ſaid warrants, or either of them, *ſeu qualiter & quomodo executi fuerint warranta illa*, *vel eorum alterutrum*, *prout* he was commanded by the reſpective warrants, *ſed retornam* of the ſaid warrants, or either of them *facere* to the ſaid juſtices, or either of them, *illicite*, *obſtinate*, *& contemptuoſe adtunc apud Felpham prædictum in comitatu prædicto recuſavit & denegavit*, *& adhuc recuſat & denegat*, *&c.*

The defendant to this indictment pleaded Not guilty; a *venire facias* was awarded *de vicineto de Felpham*, and he was tried and was convicted at the aſſize: and a *certiorari* was brought by the direction of *Gould* judge of aſſize, and the record moved into the King's Bench. And there, after three ſeveral arguments, by Mr. *Montague*, Mr. *Eyre*, and Mr. *Whitaker* for the defendant, and by Mr. ſerjeant *Broderick*, and Mr. ſerjeant *Cheſhyre*, and Mr. attorney for the Queen, judgment was given for the Queen, and the defendant fined 200*l.* which was the ſum levied, by the opinion of the three judges againſt *Holt* chief juſtice.

The caſe was argued *ſeriatim*. And firſt, *Gould* juſtice argued for the Queen as to the firſt objection, that the conſtable is not obliged by law to execute the juſtices warrant in this caſe. That ſtrikes at the act of 13 *Car.* 2. *ſeſſ.* 1. *c.* 10. againſt deer-ſtealers, for there in the ſame manner as here, the penalty is directed to be levied by way of diſtreſs, upon the goods and chattels of the offender, by warrant under the juſtice's hand before whom ſuch conviction ſhall be made; but no officer named, who ſhall execute the warrant, no more than here. But upon both acts, the conſtable is to execute it. For the penalty is to be levied by warrant of the juſtice; therefore he is not to levy it himſelf, and therefore he muſt ſend the warrant to his officer, which is the conſtable. And a conſtable of an hundred is as much an officer to the juſtices of peace, as a conſtable of a pariſh. And he is properer, becauſe he has a larger juriſdiction, for the goods might be out of the limits of the other's juriſdiction. Beſides, when this power is veſted in the juſtices of peace, they muſt proceed to execute it, in the ſame manner as they do other things in their power. As if an act of parliament were to make any thing a nuſance, the party who ſhould be guilty of it muſt be proceeded againſt of conſequence in the ſame manner, as for a nuſance at common law.

As to the ſecond objection, that when the convictions are ſet out, there is no concluſion *prout patet per recordum*, and that the *venire facias* is only *de vicineto de Felpham*, and of *Arundel*, where the warrant was made, and *Walburton*, where it was executed; whereas it ought to have been from them as well as *Felpham*.

ham. I anſwer, that thoſe matters are only inducement, but that which is the *git* of the charge, and makes the offence, is the contemptuouſly not returning the warrants. And there was a caſe *Paſch.* 16 *Car.* 2. *Rex* verſ. the overſeers of the poor of St. *Clement's*, which comes up to this; where the defendants were indicted for not obeying an order of ſeſſions; and exception was taken to the indictment, becauſe there was no place laid where the order was made; and it was held to be good, becauſe the neglect was the *git* of the the indictment, and the order was but inducement. But it is otherwiſe in caſes of indictments for forging a deed at one place, and publiſhing it at another; the jury muſt come *de vicineto* of both places.

As for the power given in the act to the proſecutor to detain the perſon convicted in cuſtody, till a return can be made to the warrant of diſtreſs; from whence it is inferred, that the proſecutor is alſo to execute the warrant of diſtreſs, that ſeems to me to be nothing to the purpoſe.

Powys juſtice for the queen: It is requiſite there ſhould be a return made of warrant, that the juſtice of peace may know what is done upon it. Firſt, becauſe of dividing the money levied as the act directs, which is to be directed by the juſtice. Secondly, becauſe if there be not ſufficient diſtreſs to be had, there is to be another puniſhment inflicted, in the nature of a ſecond judgment, *viz.* impriſonment for a year, and the pillory. Thirdly, the act of parliament directs the offender to be kept in cuſtody, during ſuch reaſonable time as a return may be had to the warrant of diſtreſs; which ſhews the act intended the warrant ſhould be returned: and the return of the warrant is part of the execution of it. And a conſtable refuſing to execute a warrant of a juſtice of peace, is indictable. And ſo is 2 *Roll. Rep.* 78.

As to the objection, that the conſtable is not obliged to execute this warrant, it was intended by the act of parliament that the conſtable ſhould execute it. For the money being to be levied by warrant under the hand of the juſtice, and it not being ſaid in the act who ſhould execute the warrant, the conſtable muſt execute it, who is the proper officer attendant on the juſtices of peace. And beſides, there are ſeveral things appointed in the act of parliament to be done by the conſtables; as detaining the offender in cuſtody, till a return may be made to the warrants, *ſect.* 4. ſearching for veniſon, ſkins of deer, and toils, *ſect.* 3. which ſhews that the lawmakers looked upon him as the proper perſon in this caſe. And as to the objection, that it may as well be the proſecutor, becauſe it is given to him by *ſect.* 4. to detain the offender till a return may be made of the warrant; I anſwer, that he is only named for that particular purpoſe.

As to the objection of the want of *prout patet per recordum*, that is but inducement, and the *git* of the offence is, the not returning the warrant. As to the objection, that there is a miſ-trial, I think this is the very beſt place from whence the jury could come, it being the place where the warrant was delivered, which is the place which has the neareſt relation to the offence. Alſo this indictment is for a *nonfeaſance*, and therefore any place may be laid, it is not material what; but the place that is laid here is right as can be. Alſo, it would have been good, if it had been, that he refuſed generally, without any place.

Powell juſtice for the queen. The queſtion is, If this be a good indictment? And I hold it is; a neglect of duty in an officer is indictable at common law; this is an indictment at common law. And that takes away the exceptions to the indictment from the ſtatute. For this is no otherwiſe an indictment upon the ſtatute, than that the ſtatute makes it the conſtable's duty to execute the warrant.

But it is objected, that the executing of this warrant is not made part of the conſtable's duty by this ſtatute. But to this I anſwer, that conſtables are known officers to juſtices of peace. And if an act of parliament ſays, a juſtice of peace ſhall grant a warrant; by conſequence of law it muſt be to the conſtable. Conſtables were officers at common law, they were conſervators of the peace for things within their view; and ſome held they might take a bond. But they are not judges of record. But ever ſince juſtices of the peace have been erected, conſtables have been their officers, and conſtant experience is ſo. Secondly, juſtices of peace cannot command the ſheriff, unleſs power is given them ſo to do in the act of parliament. And that ſuppoſal, that the party ſhould execute the warrant, is harſh; for that is a practice never known in the law, but it muſt be done by the uſual officer. And I believe there are many acts of parliament which impower juſtices to grant warrants, that do not mention that they ſhall be directed to conſtables. If a juriſdiction of a new matter were given to this court by act of parliament, we muſt proceed in it according to our forms. So juſtices muſt grant their warrants to their known officer. My lord *Coke*, 4 *Inſt.* 267. ſays, That a conſtable of a hundred was not an officer at common law, but created by the ſtatute of *Wincheſter*. But I hold, that he was an officer at common law, and the ſtatute of *Wincheſter* only enlarged his authority in ſome particulars. And ſo it was held by my lord chief juſtice *Hale* in the caſe of *Rex* v. *King:* and the caſe of *The King* v. *Samois*, *Hil.* 16 *&* 17 *Jac.* cited for it. And the new authority, which was given them by the ſtatute of *Wincheſter*, was what occaſioned the miſtake. And ſo they are officers of the peace, and officers to the juſtices of peace, where no particular officer is named.

The convictions are but inducement, and therefore they may be pleaded without *prout patet per recordum:* the *git* of the offence is the not returning the warrant. And there are many caſes, that where a matter of record, which alledged in pleading, is only introductory, it is not neceſſary to aver it by the record.

The warrant requires a return, ſo is the warrant itſelf expreſly. And it is neceſſary on the frame of the act of parliament. For, as my brother *Powys* ſays, the offender is to be kept in cuſtody till a return may be had to the warrant; and for that reaſon the return ought to be ſpeedy, that if there be ſufficient diſtreſs, the offender might be delivered out of cuſtody; or if not, the juſtice might proceed to give ſuch farther judgment as the act directs. And in order to that, the juſtice ought to know, what is done on the warrant.

It is objected thirdly, that the *venire facias* ought to have been from the places mentioned in the indictment. But as to this, the difference is, where the matter in iſſue ariſes in ſeveral places, there the *venue* muſt be from all the places. As where a preſcription for a way from *A.* through *B.* to *C.* is in iſſue, the *venue* muſt be from *A. B.* and *C.* So where the appendancy of common in *A.* to lands in *B.* is traverſed, the jury muſt come from both places. But though a matter ariſing in another place is neceſſary to be given in evidence, yet if the iſſue be not upon it, it is otherwiſe. And to that purpoſe is the caſe of *Clock* v. *Wood*, *Hutt.* 39. *Hob.* 305. 1 *Jones* 2. where the plaintiff declared, that he was ſeiſed in fee of a houſe in *D.* and that the defendant was ſeiſed in fee of ſeven acres of land in *D.* and that he and and all thoſe, *&c.* had had a way over the ſaid ſeven acres to a place in *S.* and that the defendant had plowed up the ſeven acres, *&c.* and upon not guilty pleaded, the *venue* was from *D.* only, and it was reſolved to be well: for Not guilty being pleaded, the *tort* in plowing up the way is only in iſſue, though the right to the way muſt be proved upon the trial; and therefore the *venue* need be only from *D.* otherwiſe if the defendant had traverſed the preſcription. And the difference is, where preſcription is in iſſue, and where the *tort* only. As upon a plea of Not guilty, 3 *Co.* 619. *Sidenham* v. *Robins:* an action for ſtopping a way: the ſame caſe and the ſame difference. 3 *Cro.* 751. *Leeds* v. *Shakerly:* an action upon the caſe for ſtopping his water-courſe to his mill, and the declaration of a water-courſe running by three *vills*, *A. B.* and *C.* to his mill, and that the defendant ſtopped the water-courſe in *A.* and upon Not guilty pleaded, the *venue* was from *A.* only, and held well, the iſſue being not guilty; otherwiſe, if the iſſue had been upon the preſcription. 2 *Cro.* 631. *Burbott* v. *Kent*, raviſhment of ward: the plaintiff declared, that the anceſtor of the ward held lands in *S.* and *T.* of the plaintiff, as of his manor of *S.* *&c.* and the defendant raviſhed the ward *apud* S. and upon not guilty pleaded, the *venue* was from *S.* and aſſigned for error, becauſe it ought to have been from the manor of *S.* or from that and *T.* but reſolved to be well, Not guilty being pleaded: for the iſſue is upon the raviſhment, which is laid at *S.* but otherwiſe if the iſſue had been upon the tenure, for then it ſhould have been from the manor of *S.* and *T.* and yet in both thoſe caſes the tenure, and alſo the water-courſe muſt be given in evidence; but the iſſue is directly upon the *trot*, and but incidentally upon the tenure, *&c.* But it is objected, that the *venue* ought at leaſt to have been from two of the places; *Felpham* where the warrant was delivered (and that place all agree it ought to come from, for that is the moſt material thing); and it ought to be alſo from *Walberton*, the place where the money was levied. But that I deny, for the matter of the money being levied might have been left out of the indictment, though it will be an aggravation of the fine, for the fine for the offence is not returning the warrant. And in caſe this had been an action to recover damages, this might have been an objection, becauſe the jury ought to have inquired into the levying the money, in order to have enabled them to aſſeſs damages. But upon this indictment, it was enough to prove a delivery of the warrant.

As to the objection, that there ought to have been a place expreſſed in the warrant, where it ſhould be returned; that was not neceſſary, nor ever is inſerted in any warrants. And if the juſtice was not to be found, that would have been a good excuſe for the conſtable upon his defence; but we muſt preſume he was in the way. If indictments will not lie in this caſe, the act of parliament will ſignify nothing.

Holt chief juſtice for the defendant: I make no queſtion but an indictment will lie in this caſe, but I do not like this. The conſtable is a proper officer to execute the warrant;

but

but that which ſticks with me is, that there is neither time nor place mentioned in the warrant, when and where it ſhould be returned; whereas there ought to be both: and all proceſs in the ſuperior courts are ſo. Muſt the conſtable ſeek the juſtice all over the county? Indeed original writs in this court are returnable *ubicunque*; but the ſheriff is an officer to this court, and therefore muſt take notice where the court ſits. But bills in this court have a place of return, and ſo has all proceſs that iſſues out of the common pleas and exchequer. And it is reaſonable for the juſtices of peace, who have but ſpecial authority, to inſert a place of return in their warrant.

2. The time when the warrant was returnable is not ſet out. All that is ſaid is, that it was *ad certum diem longe abhinc præteritum*; but the certain time ought to have been ſet out, for it might be delivered after the return was out. It is ſaid, that *poſtea*, *ſcilicet* the ſaid ſecond of *September*, it was delivered to the conſtable the defendant, to be executed; but that is but evaſive, for it might be delivered after, and alſo after the return was out, and it is not ſufficiently laid, that it was otherwiſe. And if it was ſo, then the not returning it is no offence; for a man is not bound to execute a warrant, that is delivered to him after the return is out: for after the return is out, the warrant has loſt its force. The indictment would have been better, if it had been for neglecting to execute the warrant: for if he had not paid every

perſon their ſhare, the defendant had not executed the warrant.

The caſe cited by my brother *Gould* of the king *v.* the overſeers of St. *Clement*'s was a plain caſe, becauſe the non-execution was in the pariſh of St. *Clement*'s. But there is no more reaſon in this caſe to ſay, the neglect was at *Felpham*, than any place elſe.

As to what has been ſaid about a high conſtable, though the caſe of *Sharrock* v. *Hannemer*, 3 *Cro.* 375. is, that a high conſtable cannot arreſt a man for a breach of the peace within his view, for that he was not ſuch an officer, nor conſervator of the peace, whereof the common law takes any notice, for he is not mentioned in any book; yet that has been ſince contradicted in my lord *Hale*'s time. *Mich.* 25 *Car.* 2. And it has been held, that a high conſtable was an officer at common law, and had power to do all things which a petty conſtable can do.

Judgment was given for the queen by the opinion of the three *puiſne* judges.

Upon the former arguments of this caſe, the chief juſtice, and *Powell* and the court held, that in caſe an offender was but once convicted, and had goods only ſufficient to ſatisfy part of the ſum forfeited, that his goods could not be taken, but he muſt be impriſoned for a year, and ſet in the pillory. But in caſe he were twice convicted, and had goods ſufficient to ſatisfy one conviction, but not both, he ſhould pay one, and ſuffer corporal puniſhment for the other. But the law never intended he ſhould ſuffer both ways upon one conviction, to pay part, and be ſet in the pillory for the reſidue.

The chief juſtice and *Powell* alſo held, that the conſtable was not obliged to return the warrant itſelf to the juſtice, but might keep that for his own juſtification, in caſe he ſhould be queſtioned for what he had done; but only to give him an account what he had done upon it.

The chief juſtice held, that it was not neceſſary, to ſet out the convictions in the indictment at large, but ſhortly, that ſuch an one was before ſuch and ſuch juſtices convicted *ſecundùm formam ſtatuti, & ſuperinde* a warrant was iſſued, *&c. Trin.* 4 *Ann. Regina* v. *Wyatt*, Lord *Raym.* 1189.

On a warrant upon a conviction for deer-ſtealing, the conſtable may ſell the diſtreſs.

Naſh was convicted before the juſtices upon the late ſtatute, for deer-ſtealing, and the juſtices iſſued their warrant thereon to the conſtable to levy the penalty, who accordingly diſtrained the goods of *Naſh*; but before any ſale of the goods a *certiorari* was brought to remove the conviction into this court, where it was affirmed. After the *certiorari* brought, the conſtable ſold the goods, and levied the money, but refuſes to pay over to the proſecutor according to the ſtatute. And now Mr. *Broderick* prayed a *mandamus* to compel him to pay the money, for that the conſtable having made no return of his warrant, the party has no other remedy.

Mr. *Montague* and Mr. *Eyre* oppoſed it, and inſiſted that no *mandamus* lies in this caſe, for here is no return to charge him, and the proſecutor has proper remedy by action, as for money received to his uſe.

Mr. *Broderick:* He ought not to be allowed to take advantage of his own wrong, we have no other remedy for want of proof. *Holt* chief juſtice: It was doubtful upon the words of the ſtatute, whether the conſtable had power to ſell the diſtreſs, but we have determined it that he may. Now in this caſe, the conviction being removed before us by the *certiorari*, the proſecutor cannot reſort to the juſtices.

Powell juſtice: Cannot we make a rule for him to return his warrant?

Holt chief juſtice: No, we cannot, for it is an authority executed before the *certiorari* awarded, and we have no conuſance of the warrant, no more than of an execution executed on a judgment in the common pleas before a writ of error brought in this court. The proſecutor ſhould have kept a copy of the warrant that was delivered to the conſtable, and that would have been evidence againſt him on an action. But this warrant being returned before the juſtices, they may call upon and require the conſtable to make a return of his warrant. For the goods being diſtrained before the *certiorari* awarded, although they were not ſold till after, yet execution being executed in part before the writ iſſued, it does not ſtop the execution of the reſidue, but the juſtices may proceed againſt the conſtable, and this is your proper remedy. As when a *ſcire facias* is ſued on a judgment given in the common pleas, and the defendant's goods ſeized thereon, and then a writ of error is brought in this court, yet notwithſtanding the common pleas may award a *venditioni exponas*, upon a return by the ſheriff, that the goods remain in his hands *pro defectu emptorum:* we will not ſtrain theſe things. Take your remedy from the juſtices, who have a coercive power to make the conſtable return his warrant, and may ſet a fine upon him, if he does not; and we can do no more to a ſheriff for not returning an execution. We cannot make laws.

Powell of the ſame opinion.

Holt chief juſtice: If we ſhould grant a *mandamus*, and the conſtable refuſe to comply with the command of the writ, all we can do is to fine him, and it is a round about way. You may indict him, or proceed againſt him by way of information; or the juſtices may fine him high enough to compel him to pay the money.

Let the rule for a *mandamus niſi, &c.* be diſcharged, *per curiam. Trin.* 2 *Ann. Regina* v. *Naſh*, Lord *Raym.* 989.

Conviction of aiding and aſſiſting men in deer-ſtealing, upon 3 & 4 Will. & Mar. c. 10.

Rolfe, *Stone*, and *Whiſtler*, were convicted upon the 3 & 4 *Will. & Mar. cap.* 10. made againſt deer-ſtealers, *viz. Rolfe* and *Stone* for killing of five deer in the park of Sir *Cecil Biſhop*, and *Whiſtler*, for that, that he *fuit illicite & injuſte auxilians & aſſiſtens Rolfe & Stone in occiſione damarum illarum in incitando & perſuadendo Rolfe & Stone* to kill the ſaid deer, *et accommodando eiſdem Rolfe & Stone equum & canem* for the ſaid purpoſe. This conviction was removed into the king's bench by *certiorari*, and exceptions were taken to it by the counſel at the bar. And they were ſeveral times argued by Mr. *Montague*, &c. for the defendant, and by Mr. *Broderick*, Mr. *Cheſhyre*, &c. for the queen; and the grand queſtion was, Whether the defendant *Whiſtler* was convicted of any offence within the ſaid act of parliament? And now this term the judges pronounced their opinions in ſolemn arguments, *viz.* *Powys* and *Gould* juſtices, that the conviction was good, and ought to be affirmed; and *Holt* chief juſtice, that it was bad and ought to be quaſhed. *Gould* juſtice declared the reaſon of his opinion to be, 1. Becauſe the defendant was included within the words of the act, aiding or aſſiſting therein. 2. Becauſe (by him) if the ſaid words had been omitted, yet ſince in treſpaſs all perſons concerned are principals, the defendant ſhould be included within the words, hunt and kill. And as to the firſt, he ſaid, that if the words of the act had been, aiding or aſſiſting thereto, the defendant without doubt had been compriſed within ſuch words: then the word therein has the ſame import as thereto; and therefore that he was compriſed within the words of the act. Beſides which he ſaid, that it is apparent, that ſuch offenders as the defendant are within the intention of the act; and that appears from the preamble of the ſtatute, which recites, that there were confederacies of ſuch perſons, and that they indemnify their aſſociates; and then the ſtatute enacts, That ſuch perſons offending in ſuch manner, ſhall forfeit, *&c.* that is to ſay, that ſuch perſons, who are in confederacy and combination, and by ſuch means aiding and aſſiſting, *&c.* And as well he, as *Powys*, relied much upon the intent of the act.

And *Gould* juſtice farther ſaid, that he relied much upon the word *ſuch* in the act, which couples the body of the act with the preamble, and makes it of equal extent. As upon the ſtatute of 34 *Hen.* 8. *cap.* 20. which diſables donees in tail of the gift of the king from barring their iſſues by common recovery, the word *ſuch* in the body of the act refers to the preamble, and includes all like caſes, that is to ſay, which are ſuch in the miſchief and inconvenience. 2 *Co.* 14. *b.* *Co. Lit.* 273. So where the act of 23 *Hen.* 8 *cap.* 1. takes away clergy from ſeveral offenders, and among them from burglars, robbers upon the highway, and burners of houſes; and then the 25 *Hen.* 8. *cap.* 3. among other things takes away clergy from burglars, and robbers upon the highway who do the act in one county and then fly into another county, and there taken with the mainer and indicted; and then the ſtatute 1 *Edw.* 6. *cap.* 12. enumerating ſeveral offences, takes away clergy from them, but omits burners of houſes, and the caſe of burglars and robbers in one county who fly into another; and by a general clauſe, reſtores clergy to all other offences, *&c.* by which means clergy was reſtored in the two caſes before; and then 5 & 6 *Edw.* 6. *cap.* 10. reciting the ſeveral ſtatutes before mentioned, and farther the inconvenience that clergy was reſtored in the caſe of burglary, &c. committed in one county where the offender fled and was convict in another county, which they could not have had, if the ſaid act of 25 *Hen.* 8. *cap.* 3. had been in force; it is therefore enacted, that the ſaid act of 25 *Hen.* 8. touching the taking away of clergy from ſuch offenders, touching offences from thenceforth to be done, ſhould ſtand in full force: theſe words, ſuch offenders, and ſuch offences, muſt be interpreted ſuch in miſchief and inconvenience, and will extend, to take away the clergy from burners of houſes, notwithſtanding the particular recital of the ſaid particular inconvenience, 11 *Co.* 33. *Alexander Poulter's* caſe. And the ſtatute 5 & 6 *Edw.* 6. is a penal ſtatute. And for the ſame reaſon here the abettors, procurers and aiders, though abſent, being equally miſchievous and of ill conſequence with thoſe who do the act, they muſt be taken to be within the ſtatute; eſpecially ſince the word *aid* in its natural extent includes perſons abſent, who counſel, abet, &c. as 2 *Inſt.* 192. explains it. 2. By him, if the ſaid words had been omitted, the defendant had been within the words, hunt and kill; for in treſpaſs, where all are principals, he who abets the doing of a fact, is the doer of the fact. So in treaſon, 12 *Co.* 81. there is no difference between this caſe and felony, unleſs that in felony there may be acceſſories; for it is a rule, that when a ſtatute makes a fact felony, which was not ſo before, all the acceſſories before and after the fact are felons, 3 *Inſt.* 17. and conſequently in a law where there cannot be acceſſories, they muſt be principals. And he, as well as *Powys* juſtice, relied ſtrongly upon 13 *Hen.* 7. 12, 13. where it is held, that the requeſting of another to hunt is a hunting within 3 *Edw.* 1. *cap.* 20. *de malefactoribus in parcis*; for the commanders ſhall be treſpaſſers, as well as the very treſpaſſers; and yet it is a penal law, which ſhall not be taken by equity. 2 *Inſt.* 199. And *Powys* juſtice was of the ſame opinion with *Gould* juſtice, though upon the arguments he was ſtrongly of another opinion. And he founded his opinion principally upon the intent of the act, as is ſaid before in the argument of *Gould* juſtice. *Powell* juſtice differed from his brothers in their conſtruction made by the preamble. For (by him) being a penal law, it cannot be taken by equity; but was of opinion that this conviction was good, becauſe the defendant was comprehended within the very words of the act. For (by him) he is a hunter, killer, *&c.* in conſtruction of law; and upon iſſue joined, whether he was ſuch or not, this evidence ſhewn in the conviction would maintain that he was. And (by him) the diſtinction made where the penalty is annexed to the offence, and where to the perſon offending, which governs the caſe of *Evans* v. *Finch*, *Cro. Car.* 473. is nice; for whereas the ſtatute of *Weſtm.* 2. *cap.* 34. enacts, That if a man raviſhes a woman, *&c.* he ſhall be a felon; nevertheleſs the perſons aiding and abetting are raviſhers, and yet there is nothing that can be a more a perſonal act than that: the ſame law of aiding, tho' ſhe is incapable

able of doing the fact. So upon the act of 3 *Hen.* 7. *cap.* 2. which makes the taking of a woman with force and marrying her, to be felony; though by the ſaid act the acceſſories before the fact are made principals, yet perſons aiding and abetting the raviſher after the fact are felons. So upon the ſtatute *de malefactoribus in parcis*, which is a penal law, and by which the penalty is annexed to the perſons as here, miſdoers in parks and ponds, *&c.* The firſt caſe upon the ſaid ſtatute was 30 *Edw.* 1. 10. where it was adjudged, that no treſpaſs was within the ſaid act, unleſs it was a treſpaſs in hunting. The next caſe was the 5 *Hen.* 5. 1. where the breaking the park with intent to hunt was adjudged to be within the ſtatute. Then follows the 13 *Hen.* 7. 12, 13. where it is reſolved, that the requeſting of another to hunt is a hunting within the ſtatute. Alſo where the 30 *Hen.* 8. *cap.* 12. makes ſuch perſons as enter the parks of the king or prince, with painted faces, or kill the deer there, felons, by a proviſo in the ſame act it is enacted, That no perſons ſhall be adjudged acceſſories, but thoſe who ſhall abet or procure ſuch offence to be done; which was provided to exempt acceſſories after the fact, from being felons, as otherwiſe they would have been, notwithſtanding that the perſon offending was made the felon. For it is always a rule, where a fact is made felony, that all perſons aiding and abetting to it ſhall be acceſſories; whether it be, that the offence is made felony, or the perſons offending felons. And for the ſame reaſon, the procurer in treſpaſs ſhall be principal, ſince there is no acceſſary in treſpaſs. As to the objection, that the caſe of *Finch* v. *Evans*, *Cro. Car.* 473. and *Page* v. *Harwood*, *Alleyn* 43, 44. make this difference, where clergy is taken away from the offence, and where from the perſon offending, and in this caſe the penalty is confined to the perſon actually doing the fact; he anſwered, that the ſaid caſes being caſes of life, the judges in favour of life conſtrued the ſtatutes tenderly; otherwiſe it ſeems abſurd, to take away clergy from him who was upon the top of the ladder, and give it to him that was at the bottom; for if both had entered the room, and one of them had had the money in his cuſtody at the requeſt of the other, both of them would have been deprived of their clergy. And as to the caſe of *Page* v. *Harwood* he ſaid, that it ſeemed to him, that the offence conſiſted in the manner of doing of it, becauſe the *Scots* carried ſhort daggers, and frequently upon differences ariſing at table, *&c.* ſtabbed others unprovided. But in the ſaid caſe, if *A.* had given the dagger to *B.* he would have been within the act. But (by him) the ſaid reſolutions being in caſes of life, they will not be rules to govern caſes of ſmaller crimes. He concluded, that ſince in caſes of all penal laws, as in thoſe which make felonies, aiders and aſſiſters are included, *a fortiori* it ſhall be accordingly in caſes of treſpaſs, where ſuch perſons are principals, and where the law not being ſo penal, there is not ſo much reaſon to make a ſtrict conſtruction.

But *Holt* chief juſtice delivered his opinion, that the conviction was not good within the ſtatute, and therefore that it ought to be quaſhed. For (by him) this is a penal ſtatute, and therefore ought not to be conſtrued by equity; but in making conſtruction one muſt adhere to the letter, and one cannot extend it to facts equally criminal with thoſe ſpecified in the letter, if they are not contained in it. That this act is penal, appears by the penalty inflicted by it, by the ſubjecting of offenders to a new method of proſecution before a private juriſdiction, contrary to the ancient liberties of *Engliſhmen* confirmed to them by *Magna Charta*, to be tried by their peers. Now this act does not inflict any penalty upon the confederates concerned in the offence. It is true, the preamble recites, that there were combinations, *&c.* but the enacting part of the ſtatute does not inflict any penalty, but has made the offence very penal to the actors, perhaps by reaſon of theſe confederacies. But ſince the act has not inflicted puniſhment upon them, we ought not. For one may imagine with great reaſon, that ſince the ſtatute mentions confederates, and does not inflict puniſhment, that it did not intend that they ſhould be puniſhed, but only the actors. The words of the act are, aiders and aſſiſters therein. Now that is the actors themſelves; and if the act had intended confederates, it would have ſaid thereto. A man who provides a horſe to rob a park, is an aider of the fact, but not in the doing of the fact. In an indictment againſt the abettor they always ſay, that he was *praeſens comfortans et auxilians*, *&c.* but in the indictment of the acceſſary they ſay, that he before the fact *conſuluit*, *mandavit*, *procuravit et abettavit*; or that he after the fact *recepit*, *auxiliavit*, *et comfortavit:* And by the firſt they mean aiders and aſſiſters; therefore if a ſtatute takes away clergy from aiders and abettors, yet acceſſaries ſhall have their clergy. See this difference in the indictment of an abettor and an acceſſory, *Dier* 186.

Objection. That this offence is of an inferior nature, and therefore all are principals.

Anſwer. If the penalty had been inflicted upon all the trepaſſers, it had included all, becauſe all are included within the denomination of treſpaſs. But here the penalty is inflicted upon perſons by a particular deſcription; and that is the true reaſon of the caſes adjudged upon the ſtatute *de maleſactoribus in parcis*, becauſe the penalty is there inflicted upon the treſpaſſers in parks, *&c.* which compriſes all. But if the ſaid ſtatute had impoſed a penalty upon the hunters and chaſers, *&c.* or any other offender by particular deſcription; no body had been within the ſaid ſtatute, but thoſe particularly deſcribed. And he relied ſtrongly upon the caſe of *Evans* and *Finch*, as ſtrong in point, which he had ſeen upon the roll; and he put it at large as it is there, which agrees with the report of it in *Cro. Car.* 473. *Evans* went up a ladder to the window of Mr. *Audley*'s chamber, and broke it, and took out 40*l.* *Finch* ſtood watching at the foot of the ladder, and aſſiſted the doing of the felony:

It was held, that *Finch* ſhould have his clergy, notwithſtanding the 39 *Eliz. cap.* 15. which takes away clergy from men convict of the felonious taking of goods, *&c.* of the value of 5 *s. &c.* out of any manſion houſe, *&c.* no perſon being in it. Now *Evans* and *Finch* were principals in the felony; but becauſe clergy was not taken away from the offence, but from the perſon taking, *&c.* the ſtatute was reſtrained to the latter, *viz.* to the perſons actually taking. But if clergy had been taken away from the offence, as in caſe of robbery upon the highway; he who ſtood at the end of the way, to watch, ſhall not have his clergy, no more than he who actually did the robbery.

Objection. If a fact, which at Common Law was but treſpaſs, be made felony; or if felony be made treaſon; the procurers are felons or traitors: And by parity of reaſon they ought to be included within this law.

Anſwer. That in the caſes cited, the nature of the crime is altered, and it is made a crime of another ſpecies; and therefore the perſons concerned in it cannot be treſpaſſors or felons, but felons or traitors. He cited alſo the caſe of *Page* and *Harwood*, as a caſe founded upon the ſame reaſon as that of *Finch* and *Evans*, and corroborating it. Therefore the ſtatute in the preſent caſe deſcribing particularly, what perſons ſhall be puniſhed, *viz.* courſers, hunters, *&c.* it ſhall not be extended to any perſon, who cannot be compriſed within the deſcription, within which (as is aforeſaid) the defendant is not. He was of opinion, that the conviction ought to have been quaſhed. But by the opinion of the other three judges it was confirmed. *Mich.* 1 *Ann. Regina* ver. *Whiſtler et al'*, L. *Raym.* 842.

How the executor ought to proceed for penalties upon convictions of deer-ſtealing, where the informer dies before execution.

Ford and the other defendants were convict of deer-ſtealing by juſtices of peace, according to the late act of parliament. And the convictions, being removed into the king's bench by *certiorari*, were there confirmed. And after the confirmation, and before execution awarded, the perſon, who was as well the informer as the owner of the deer, died; and his wife, being his adminiſtratrix, ſuggeſted his death upon the roll, and that ſhe was adminiſtratrix, and upon that ſued a *levari facias* upon the ſaid convictions confirmed as aforeſaid, to levy the penalties; which were levied accordingly by the ſheriff, and diſtributed as the ſtatute directs. And now Mr. *King* moved, that this execution ſhould be ſet aſide as irregularly obtained. 1. Becauſe a *levari facias* does not lie. 2. Becauſe the execution ought not to have been ſued by the adminiſtratrix without a *ſcire facias*, *&c.* But as to the firſt objection, the whole court held, that a *levari facias* well lay. But they held that this execution was irregular; becauſe in no caſe, where the parties to the judgment are changed, ought execution to be ſued by any other without a *ſcire facias*. Whereupon reſtitution was granted of the money levied. *Eaſt.* 1 *Ann. Queen* v. *Ford et al'*, Lord *Raym.* 768.

Conviction quaſhed for not ſhewing that the place was incloſed.

A conviction againſt the defendant for killing deer was removed into this court by *certiorari*, and was quaſhed, becauſe it ſaid only, that he killed deer *in quodam loco* where they had been uſually kept, and did not ſay incloſed. *Trin.* 1 *Ann.* *King* ver. *Moore*, L. *Raym.* 791.

Who is an aider and aſſiſter in deer-ſtealing within 3 & 4 W. & M. c. 10.

Upon a conviction of deer-ſtealing by juſtices of peace on the late ſtatute, the queſtion was, whether one not preſent, but procuring, adviſing, and abetting, by lending his gun, dog, *&c.* before the fact, ſhould be ſaid *to be aiding and abetting therein?* *Holt* C. J. inclined, 1ſt, That he was not within the words, not being actually preſent at the fact, becauſe the ſtatute is to be conſtrued ſtrictly, for that it takes away the privilege of a better trial, *viz. per pares.* 2dly, Becauſe it adds a farther penalty to what was an offence before: He ſaid there might be an aiding and abetting before the fact, *viz.* by advice, *&c.* or in the fact by being preſent; or after the fact, by abetting the party. *Vide Dy.* 187. *Co. Ent.* 56.

The other judges held aiders in the fact would be principals, and then aiders and abettors would mean nothing. *Quod Holt negavit*, ſaying, All that are preſent may be ſaid to be principals as to an action of treſpaſs, but not as to the penalty of this ſtatute: And this diverſity is apparent in other caſes, for one aiding and aſſiſting upon the ſtatute of ſtabbing, ſhall have his clergy, whereas a principal ſhall not. So in the caſe where two went to break a houſe, one broke it and entered, the other ſtood upon the ladder and received the goods; he that ſtood upon the ladder ſhall have his clergy, and the other ſhall not, being a principal. *Mich.* 1 *Ann. Domina Regina* v. *Naſh*, 2 *Salk.* 542.

Conſtruction on game-act of 5 Geo. 1. c. 15.

The defendant being brought up from *Newgate* by *habeas corpus*, it appeared upon the return, that he was committed for deer-ſtealing, as the ſtatute 3 & 4 *W.* & *M. c.* 10. directs, not having ſufficient diſtreſs; and that this was done by one juſtice under the ſtatute 5 *Geo.* 1. (See *p.* 70.) and two exceptions were taken to the warrant.

1. Becauſe it does not appear the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the juſtice, and the words of the ſtatute are, "That "*after* the confirmation of any conviction and "delivering the rule to the juſtice, it ſhall "and may be lawful, &c." Now this ſtatute gives the juſtice a juriſdiction after confirmation, which he had not before; and therefore he ought to ſhew every thing requiſite to found his juriſdiction, within the reaſon of the caſes on the ſtatute 13 & 14 *Car.* 2. *c.* 12. where orders have been quaſhed for not apearing to be *upon complaint* of the churchwardens or overſeers. So *Hil.* 4 *Ann. Regina* v. *Hinam*, a conviction on 16 & 17 *Car.* 2. *c.* 2. for ſelling coals by ſcanty meaſure was quaſhed, becauſe it did not appear to be done in the city of *London.* The word *after* makes what comes under it to be in the nature of a condition precedent, and imports ſomething previous to found the juriſdiction.

2. The juſtice only ſays, that it has been certified to him by the conſtable, that there was no ſufficient diſtreſs, whereas there ought to have been a warrant to levy, and a return to that, that there was no diſtreſs: It may be the conſtable only told him ſo.

Et per Pratt C. J. and *Forteſcue* J. (*abſente Powys* J.) the warrant is well enough, for as to the laſt objection, the word *certified* imports it to be in a legal manner. Then as to the other objection, we take notice of our own records, and by them it appears the conviction is confirmed. The ſtatute does not give the juſtice a new juriſdiction, but only revives his old one, which was ſuſpended by the *certiorari*, and therefore this widely differs from the caſe of an order of removal, for there the overſeers are in the nature of truſtees for the pariſh, and unleſs they complain, it is to be ſuppoſed there is no grievance, and it is likewiſe to give an original juriſdiction.

Eyre juſtice *contra*. The old juriſdiction was abſolutely taken away by the *certiorari*, and this a new juriſdiction given upon terms, for the proſecutor has his election to take a *levari* from us, or apply to the juſtice, and the delivering the rule is what makes his election. We never grant execution on affirmances in the exchequer, till a *remittitur*. The juſtice ſhould likewiſe ſhew a return, that there was no diſtreſs, before he can order the man to be impriſoned; according to Dr. *Bonham*'s caſe, and the caſe *Rex* v. *Chandler*, (*Salk.* 378.) *Hil.* 11 *Will.* 3. in *B. R.* where it was held, that there muſt be a record of every fining and impriſonment. There being two judges to one, the defendant was remanded. *Hil.* 6 *Geo.* 1. *Dominus Rex* v. *Whitlock*, *Strange* 263.

A deer-ſtealer may be convicted before appearance, if duly ſummoned.

The defendant was convicted upon the ſtatute 3 & 4 *Will.* & *M.* for deer-ſtealing, and the conviction ſet forth, that he had been ſummoned to appear before the juſtices; but it did not appear he ever was before them.

Exception was taken to this by *Reeve*, that as no appeal lies in this caſe, the juſtices ſhould not have proceeded in the abſence of the party, eſpecially where it may end in a corporal puniſhment, as it may do here for want of a diſtreſs; and he cited *Salk.* 56, 400. and *Mawgridge*'s caſe in *Kelyng*. And at another day (on conſideration) *Parker* C. J. delivered the reſolution of the court.

Salk. 181.
1 Mod. 41.

We are all of opinion, the offender may be convicted without appearing. The ſtatute is ſilent as to the method of proceeding, and the law of *England*, it is true, in point of natural juſtice, always requires the party charged with any offence to be heard before he be condemned in judgment; but that rule muſt have this exception, unleſs it is through his own default: Were it otherwiſe, every criminal might avoid conviction. The law being ſo, the magiſtrate is bound to give ſome opportunity to the party to appear, and if upon ſuch notice he neither comes nor ſends a ſufficient excuſe, the magiſtrate may proceed to judgment. If this was not to be allowed, the conſequence would be, that the offender would eſcape unpuniſhed, becauſe he would never appear purpoſely to be convicted, and that would be to make the execution of the law depend on the will of the offender.

The rule of law that has been objected is true, that acts of parliament, in what they are ſilent, are beſt expounded according to the uſe and reaſon of the Common Law. In the caſe of high treaſon (which is much a harder caſe than this) the party may be outlawed for his not appearing, and then he is liable to all the pains and penalties, as much as in the caſe of a conviction. So in real actions if the tenant makes a ſecond default, judgment peremptory is given for the demandant to recover. In crimes of a leſſer nature than treaſon or felony, and in perſonal actions, the outlawry expoſes the party to greater puniſhment than if he had appeared and been condemned in that action; for he forfeits thereby his liberty, goods and chattles, beſides other diſabilities which he incurs. In corporations, if a member of the body be ſummoned, and do not appear, he may lawfully be removed. 1 *Ven.* 19. 2 *Keb.* 488. 1 *Sid.* 14. 2 *Sid.* 97.

It is the conſtant practice in this court, in ſetting aſide judgments, granting attachments, *&c.* to give notice to the party to come and make his defence, and if he neglects to make his defence, the court proceeds againſt him.

This act of parliament plainly deſigned a ſummary proceeding, and therefore the proceedings muſt be guided according to the ſummary proceedings allowed in this court. The ſolemn proceedings of the law, before a man ſhall loſe his life or lands, need not be followed;

ed; and yet in thoſe caſes the judgment is, that he ſhall forfeit his life or lands, not for the crime as taken *pro confeſſo*, but the judgment is really for his abſence. The proceedings therefore againſt a man in his abſence are not againſt the Common Law. Many acts of parliament that appoint a forfeiture or penalty, do not give the juſtices power to bring the offender before them. There are many offences againſt acts of parliament, which are mere *non-feaſances* or neglects, as not putting out of lights, *&c.* Now to require the offender to be brought before the juſtices and detained, will be a ſtrange conſtruction, for that detainer may be accounted a greater puniſhment than the forfeiture; and if in ſuch a caſe the offender, to prevent further trouble, would ſend the forfeiture, why ſhould not that be a ſufficient authority for the juſtice to convict him, though he does not appear in perſon? To compel the offender to appear would be to no purpoſe; for if he does appear, the juſtices cannot compel him to make a defence.

An objection was made to the ſummons, that it does not particularize the place and hour, it is only *licet ſummonitus fuit ad hoc tempus et hunc locum, ſed defalt' fecit.* (Anſwer) The default entered by the juſtices implies the ſummons was to appear at that time and place, for otherwiſe it would not be a default; and where the legiſlature has given a power, we will preſume the juſtices purſue that power, unleſs the contrary appear. If they did not make a proper ſummons, they are puniſhable for it by information.

An attorney in theſe caſes may be made to defend.

As for the other order of conviction, whereby it appears the defendant made an attorney to defend for him, we think that is certainly good; for the offender may intruſt his defence with another, and the juſtices cannot enforce him to appear in perſon. Orders confirmed. *Hil.* 3 *Geo.* 1. *Dominus Rex* ver. *Simpſon*, *Strange* 44.

He that hath land adjoining to a chaſe, may hunt *deer* out of his ground with a little dog, but not with beagles; and by ſome, if the dog follow them into the chaſe, and the owner beat them back, yet if they kill the *beaſt* treſpaſs doth not lie. See 18 *H.* 6. *fo.* 21. Held, that if a man go in the way adjoining to a park, and his dogs break his leaſh and kill a *deer* in the park againſt his will, and he call them back, he ſhall not be puniſhed; but it ſeems that if he do not what he can to hinder them, it ſhall be a treſpaſs. 48 *Ed.* 3. *fol.* 8. *Kitchin* 119, 220.

If a perſon kill another by ſhooting *deer*, &c. in a third perſon's park, he is guilty of manſlaughter. *Hawkins's Pleas of the Crown*, 1 *B.* 74.

The defendant was convicted upon the ſtatute 13 *Car.* 2. [See *page* 57.] and immediately brought a writ of error, and moved to be bailed till error was determined; but it was denied, becauſe he was in execution for a fine; and thereupon he was committed to the *Marſhalſea*; and there being another indictment againſt him at the ſeſſions for deer-ſtealing, to which he pleaded Not guilty, it was ruled upon a motion, that it ſhould be removed and tried in the court of king's bench. One *Stirt* was convicted upon the ſaid ſtatute, and a warrant being made to levy the penalty of 20*l.* by diſtreſs and ſale of his goods; the defendant, to whom the ſaid warrant was directed, refuſed to execute it; whereupon he was indicted, which being removed by *certiorari*, it was objected, that it did not appear *where the warrant was made, or that it was made by the ſame juſtice before whom the party was convicted,* (which is expreſly required by the ſtatute) beſides the indictment was inſufficient, it being *pro injuſtâ venatione, &c.* which is not good upon this ſtatute without *killing the deer:* The indictment was quaſhed. *The King* againſt *Whitmore, Sid.* 286. *The King* againſt *Marſhal, Sid.* 320. *S. P.*

A conviction upon this ſtatute was removed by *certiorari* into *B. R.* but it was moved, that it might not be filed, becauſe, if the court ſhould be poſſeſſed of the cauſe, they cannot puniſh the offender; for the ſtatute appoints the execution to be by diſtreſs and ſale, by virtue of a warrant made *by the juſtice before whom the party was convicted*; and becauſe a writ of error doth not lie upon ſuch a conviction, therefore a *procedendo* was granted. *Gawdy* and *Felton*, 1 *Keb.* 813.

The defendant was indicted on the 3 & 4 *W. & M.* for *deer-ſtealing*, and the exception to it was, that it did not appear *in what year, or on what day the deer was killed*; then as to the form of the indictment, it was objected, that it did not appear how, or in what manner he was convicted, either by *confeſſion* or by *witneſs*, as the *ſtatute* requires; but it was adjudged, that if the *deer* was killed within a year before the indictment, it was ſufficient, and that the indictment was good, tho' it did not appear in what manner the defendant was convicted. 1 *Salk.* 381.

A perſon was convicted upon the *ſtatute* of deer-ſtealing, and it appeared by the conviction, that the *deer* were not in a park incloſed, *&c.* upon motion in the *king's bench* the conviction was quaſhed. *Mich.* 9 *W.* 3. *The King* againſt *Pennoyer.*

At every juſtice-ſeat, the number of *deer* muſt be preſented which have been given away by warrant, and ſuch as have died, or have been otherwiſe killed ſince the laſt court. *Manwood* 104.

Certiorari to remove a conviction for *deer-ſtealing*; it was objected, that the *conviction* appeared to be a year after the day when the information was exhibited; but adjudged, that if the information is proſecuted within a year after the fact, 'tis well enough, becauſe it is a good commencement of the ſuit, and 'tis from the day of the information, and not from the conviction, that the time in ſuch caſes is to be computed.

Then it was objected, that the diſtribution of the forfeiture ought to have been made by the judgment, *(viz.)* ten pounds to the informer, ten pounds to the party grieved, and ten pounds to the poor, *&c.* but here it was, that the defendant *convictus eſt & forisfaciat ſummam* 40*l. juxta formam ſtatuti*; [*is convicted and hath forfeited the ſum of* 30l. *according*

cording to the form of the ſtatute;] but adjudged, that the judgment in ſuch caſes ſeldom or never makes any diſtribution, becauſe 'tis only conditional; for if the offender hath not goods to be diſtrained, he cannot forfeit, but muſt be puniſhed in another manner. *The Queen* againſt *Barret*, 1 *Salk*. 383.

The defendant was convicted upon the *ſtatute* 3 & 4 *W*. by a juſtice, who entered into a glover's houſe, and finding a *deer-ſkin* there, aſked him how he came by it, who anſwered, that he bought it of *T. S.* who not giving a good account of himſelf, he the ſaid *T. S.* was convicted; and adjudged, that the juſtice might enter and convict the ſaid *T. S.* who ſold it. *The Queen* againſt *Innings*, 1 *Salk*. 383.

Two perſons were convicted upon the ſaid ſtatute for *deer-ſtealing*, and judgment was given, that each of them ſhould forfeit 30 *l.* and this being removed into *B. R.* it was inſiſted, that this being but one offence, there ought to be but one forfeiture, *viz.* 30 *l.* and no more; but adjudged, that the forfeiture is not in nature of ſatisfaction to the party grieved, but a puniſhment of the offender, and crimes are ſeveral, though debts are joint. *Partridge* againſt *Nailour*, *Cro. Eliz.* 480. *The Queen* againſt *King*, *Noy* 60. S. C. *Moor* 453. S. C.

The queſtion was, whether he, who *lent dogs* to another to courſe *deer*, was *aiding and aſſiſting in hunting*; and by the opinion of the three judges he was; but *Holt* chief juſtice was of a contrary opinion; for this being a queſtion upon a penal law, which ought to be conſtrued ſtrictly, then he who *lent the dogs* could not be *aſſiſting in the act of hunting*, and ſo not within the words of the ſtatute, which are *aiding and aſſiſting* therein; now he was not aſſiſting *therein*, though by lending his dogs he might be aſſiſting *thereunto*. 2 *Salk.* 542, 543.

A conviction for *deer-ſtealing* was removed into *B. R.* and there it was confirmed; and upon a *levari facias* directed to the ſheriff, he levied the 30 *l.* forfeiture by ſale of the goods; and adjudged, that the ſale was good, becauſe the court being poſſeſſed of the cauſe, the record could not be ſent back again to the juſtices; and as they have power to confirm the conviction, by conſequence they have power to award execution, which muſt be by the ſheriff, who is the officer of the court, and not by the conſtable; and it muſt be by *levari facias*, becauſe the words of the ſtatute are, that the offender ſhall forfeit, *&c.* and where the law gives a diſtreſs for a publick benefit, the offender may ſell. *The King* againſt *Speed*, 1 *Salk.* 379.

Laws of the Game. (Fiſh.)

Stat. 3 *Ed.* 1. *A. D.* 1275. See this act under title Deer.

Stat. *Weſt.* 2. 13 *Ed.* 1. *cap.* 47. *A. D.* 1285.

The penalty of killing of ſalmon in unſeaſonable time.

IT is provided that the waters of *Humber*, *Owſe*, *Trent*, *Done*, *Arre*, *Derewent*, *Wherfe*, *Nidd*, *Yore*, *Swale*, *Teſe*, *Tine*, *Eden*, and all other waters (wherein ſalmons be taken) ſhall be in defence for taking ſalmons from the nativity of our Lady unto St. *Martin*'s day. And that likewiſe young ſalmons ſhall not be taken nor deſtroyed by nets, nor by other engines at mil-pool, from the midſt of *April* unto the nativity of St. *John Baptiſt*. And in places where freſh waters be, there ſhall be aſſigned overſeers of this ſtatute, which being ſworn, ſhall oftentimes ſee and inquire of the offenders: And for the firſt treſpaſs they ſhall be puniſhed by burning of their nets and engines: And for the ſecond time, they ſhall have impriſonment for a quarter of a year: And for the third treſpaſs, they ſhall be impriſoned a whole year: And as their treſpaſs increaſeth, ſo ſhall the puniſhment.

[*The following commentary upon this act is taken from Lord* Coke's *ſecond Inſtitute, page* 478, 479.]

Before the making of this act, fiſhermen, for a little lucre, did very much harm, by deſtroying the increaſe of ſalmon by fiſhing for them in unſeaſonable times, between the beginning of *September*, and the midſt of *November*; and likewiſe for young ſalmon, or ſalmon peals, between the midſt of *April*, and towards the end of *June:* Againſt both which proviſion is made by this act.

Shall be in defence] That is, by this act it is prohibited that ſalmon, or young ſalmon, ſhall be taken between the times mentioned in this act.

From the nativity of our lady] Which is on the eighth day of *September*.

St. Martin'*s day*] Which is on the eleventh day of *November*. And note, that the day of St. *Martin*, and the feaſt of St. *Martin*, is all one, and the feaſt in legal underſtanding beginneth and endeth with the day.

Unto the nativity of St. John Baptiſt] This is not taken literally for the nativity of St. *John Baptiſt*; for that is long ſince paſt; but it is taken according to the intention of the makers, until the day or feaſt of his nativity.

And for the firſt treſpaſs they ſhall be puniſhed by burning of their nets] This ought to be by indictment at the ſuit of the king, and the puniſhment cannot be inflicted upon the delinquent before, upon due conviction, *ſecundum legem et conſuetudinem Angliæ*, judgment be given.

Stat.

Stat. 13 *Rich.* 2. *cap.* 19. *A. D.* 1389.

A confirmation of the ſtatute of 13 *Ed.* 1. 47. touching the taking of ſalmons.

A confirmation of the ſtatute of 13 Ed. 1. 47. touching the prohibiting of ſalmons to be taken certain times of the year.

There ſhall be no devices practiſed whereby the frie of fiſh ſhall be deſtroyed.

What time of the year the rivers in the county of Lancaſter ſhall be in defence.

I*TEM*, Whereas it is contained in the ſtatute of *Weſtminſter* the ſecond, that young ſalmons ſhall not be taken nor deſtroyed by nets, nor by other engines, at mil-dams, from the midſt of *April* till the nativity of St. *John Baptiſt*, upon a certain pain limited in the ſame ſtatute: It is accorded and aſſented, that the ſaid ſtatute be firmly holden and kept, joyning to the ſame, That young ſalmons ſhall not be taken during the ſaid time, at mil-dams nor in other places, upon the ſame pain. And that no fiſher, or garthmen, nor any other, of what eſtate or condition that he be, ſhall from henceforth put in the waters of *Thamiſe*, *Humber*, *Ouſe*, *Trent*, nor any other waters of the realm by the ſame time, nor in any other time of the year, any nets called ſtalkers, nor other nets nor engines whatſoever they be, by the which the frie or the breed of the ſalmons, lamprays, or any other fiſh, may in any wiſe be taken or deſtroyed, upon the pain aforeſaid. And alſo where it is contained in the ſame ſtatute, that all the waters, in which ſalmons be taken within the realm, ſhall be put in defence as to the taking of ſalmons, from the day of the nativity of our lady until

St. *Martin*'s day: It is ordained and aſſented, that the waters of *Lon*, *Wyre*, *Merſee*, *Rybbyl*, and all other waters in the county of *Lancaſter*, be put in defence, as to the taking of ſalmons, from *Michaelmas* day to the purification of our *Lady*, and in no other time of the year, becauſe that ſalmons be not ſeaſonable in the ſaid waters in the time aforeſaid. And in the parties where ſuch rivers be, there ſhall be aſſigned and ſworn good and ſufficient conſervators of this ſtatute, as it is ordained in the ſaid ſtatute of *Weſtminſter*, and that they ſhall puniſh the offenders after the pain contained in the ſame ſtatute, without any favour thereof to be ſhewed.

Conſervators of this ſtatute, and their authority.

Stat. 17 *Richard.* 2. *cap.* 9. *Anno Dom.* 1393.

Juſtices of the peace ſhall be conſervators of the ſtatutes made touching ſalmons.

St. 13 Ed. 1. 47.

ITEM, Where it is contained in the ſtatute of *Weſtminſter* the ſecond, that young ſalmons ſhall not be taken nor deſtroyed by nets, or by other engines at the ſtanks of mills, from the midſt of *April* till the nativity of St. *John* the baptiſt, upon a certain pain limited in the ſame ſtatute: And whereas by a ſtatute made the xiii. year of the king that now is, it was ordained, that the ſaid ſtatute of *Weſtminſter* the ſecond, ſhould be firmly holden and kept: Joyning to the ſame, that young ſalmons ſhould not be taken at the mills,

St. 13 R. 2. 19.

mills, ſtanks, or elſewhere, upon the ſame pain. And that no fiſher nor garthman, nor none other, of what eſtate or condition that he were, ſhould not put from henceforth in the waters of *Thamis*, *Humber*, *Ouſe*, *Trent*, nor none other water of the realm, by the ſame time, nor by none other time of the year, any nets called ſtalkers, nor other nets or engines whatſoever, whereby the frie or breed of ſalmons, lampreys, or of any other fiſh whatſoever may in any wiſe be taken or deſtroyed, upon the pain aforeſaid: And alſo it was rehearſed in the ſaid ſtatute, made the ſaid thirteenth year, that where it is contained in the ſame ſtatute of *Weſtminſter*, that all the waters in which ſalmons be taken in the realm, ſhall be put in defence as to the taking of ſalmons from the day of the nativity of our *Lady*, till St. *Martin*'s day: It was ordained and aſſented in the ſaid ſtatute made in the ſaid xiii. year, that the waters of *Lone*, *Wire*, *Merſee*, *Ribbil*, and all other waters in the county of *Lancaſter*, ſhould be put in defence as to the taking of ſalmons, from the day of St. *Michael*, till the day of the purification of our *Lady*, and in none other time of the year, becauſe that ſalmons be ſeaſonable in the ſaid waters by the time aforeſaid: And that in the parts where ſuch rivers be, good and ſufficient conſervators of the ſaid ſtatute, made the ſaid thirteenth year, ſhould be aſſigned and ſworn, as it was ordained in the ſtatute of *Weſtminſter*, and that they ſhould puniſh the offenders, upon the pain contained in the ſame ſtatute of *Weſtminſter*, without ſhewing any favour thereof:

Stalkers nor other nets ſhall be uſed to deſtroy the fry or breed of fiſh.

The juſtices of peace ſhall be conſervators of the ſtatute of 13 Ed. 1. 47. and 13 R. 2. 19.

Under-conſervators appointed by the juſtices.

thereof: Which ſtatutes have not been hitherto duly executed for default of good conſervators, as our ſaid lord the king hath perceived by complaint to him made in this preſent parliament: Wherefore it is accorded and aſſented, that the juſtices of the peace of all the counties of *England*, ſhall be conſervators of the ſaid ſtatutes in the counties where they be juſtices: And that they and every of them at all times, when they may attend, ſhall ſurvey the offences and defaults attempted againſt the ſtatutes aforeſaid. And alſo ſhall ſurvey and ſearch all the wears in ſuch rivers, that they ſhall not be very ſtrait for the deſtruction of ſuch fry and brood, but of reaſonable wideneſs, after the old aſſiſe uſed or accuſtomed: And that the ſame juſtices, or any of them which ſhall find default or abuſe againſt the ſtatutes aforeſaid, ſhall make due puniſhment of them which be found in default, after the content of the ſame ſtatute. And that the ſame juſtices ſhall put good and ſufficient under-conſervators of the ſame ſtatutes under them, which ſhall be ſworn to make like ſurveying, ſearch and puniſhment, without any favour thereof to be ſhewed. And moreover that the ſame juſtices in their ſeſſions, ſhall enquire as well by their office, as at the information of the under-conſervators aforeſaid, of all treſpaſſes, miſpriſions, and defaults made againſt any of the points aforeſaid, and ſhall cauſe them which be thereof indicted to come before them, and if they be thereof convict, they ſhall have impriſonment, and make fine after the diſcretion of the ſame juſtices. And if the ſame be at the information of any of the under-conſervators aforeſaid, the ſame under-conſervator ſhall have half of the ſame fine. And foraſmuch as it is granted to the citizens of *London* by the king's progenitors, that they may remove and take away all the wears in the waters of *Thamis* and *Medeway*, and that they ſhall have the puniſhments thereof pertaining to the king: Our ſaid lord the king, in this preſent parliament, by the aſſent aforeſaid hath granted, that the mayor or warden of *London* for the time being ſhall have the conſervation of the ſtatutes aforeſaid: And ſhall make thereof due execution, and like puniſhment, as afore is ordained of the juſtices of the peace, in the ſaid waters of *Thames*, from the bridge of *Stains* to *London*, and from thence over the ſame water, and in the ſaid water of *Medeway*, as far as it is granted to the ſaid citizens, as afore is ſaid.

The mayor of London ſhall have the conſervation of the ſtatute in the Thames.

Stat. 2 *Hen.* 6. *cap.* 15. *Anno Dom.* 1423.

I*TEM*, It is ordained, That the ſtanding of nets and engines, called trinks, and all other nets, which be and were wont to be faſtned and hanged continually day and night by a certain time in the year, to great poſts, boats, and ancres, overthwart the river of *Thames*, and other rivers of the realm, which ſtanding is a cauſe of as great and more deſtruction of the brood and fry of fiſh, and diſturbance of the common paſſage of veſſels, as

The penalty of thoſe which do faſten trinks or other nets over any river.

In what ſort owners of trinks may fiſh with them.

be the wears, kydels, or any other engines, be wholly defended for ever. And that every perſon that ſetteth or faſtneth them hereafter to ſuch poſts, boats, and ancres, or like thing, continually to ſtand as before is ſaid, and be duly thereof by the courſe of the law convict, ſhall forfeit to the king C *s.* at every time that he is ſo proved in default. Provided always, That it ſhall be lawful to the poſſeſſors of the ſaid trinks, if they be of aſſiſe, to fiſh with them in all ſeaſonable times, drawing and pulling them by hand, as other fiſhers do with other nets, and not faſtning or tacking the ſaid nets to poſts, boats, and ancres, continually to ſtand as afore is ſaid. Saving always to every of the king's liege people their right, title, and inheritance in their fiſhings in the ſaid water.

Stat. 1 *Eliz. c.* 17. *Anno Dom.* 1559.

An act for preſervation of ſpawn and fry of fiſh.

No perſon ſhall take the ſpawn or fry of any fiſh.

FOR the preſervation hereafter of ſpawn, fry, and young breed of eeles, ſalmons, pikes, and of all other fiſh, which heretofore hath been much deſtroyed in rivers and ſtreams, ſalt and freſh, within this realm, in ſo much, that in divers places they feed ſwine and dogs with the fry and ſpawn of fiſh, and otherwiſe (lamentable and horrible to be reported) deſtroy the ſame, to the great hinderance and decay of the common-wealth: Be it therefore enacted by the queen's moſt excellent majeſty, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no perſon or perſons, of what eſtate, degree, or condition ſoever he or they be, from and after the firſt day of *June* next coming, within any manner of net, weele, but, taining, kepper, lime, crele, raw, fagnet, trolner, trimenet, trimbote, ſalthote, weblifter, ſeur, lammet, or with any device or engine made of hair, wool, line or canvas, or ſhall uſe any heling-net, or trim-boat, or by any other device, engine, cawtel, ways or means whatſoever, heretofore made or deviſed, or hereafter to be made or deviſed, ſhall take and kill any young brood, ſpawn, or fry of eeles, ſalmon, pike, or pickerel, or any other fiſh, in any floudgate, pipe at the tail of a mill, were, or in any ſtraits, ſtreams, brooks, rivers, freſh or ſalt, within this realm of *England*, *Wales*, *Berwick*, or the marches thereof, nor ſhall, from and after the firſt day of *June* next coming, by any of the ways and means aforeſaid, or otherwiſe, in any river or place above ſpecified, take or kill any ſalmons or trowts, not being in ſeaſon, being kepper ſalmons, or kepper trouts, ſhedder ſalmons, or ſhedder trowts.

None ſhall take any ſalmons or trowts not in ſeaſon.

Of what length fiſhes muſt be, that ſhall be taken and killed.

And be it further enacted by the authority aforeſaid, That no perſon or perſons, of what eſtate, degree, or condition he or they ſhall be of, from and after the ſaid firſt day of *June*, by any of the means aforeſaid, in any of the rivers or places above named, ſhall take and kill any pike or pickerel, not being in length ten inches fiſh, or more; nor any ſalmon, not being in length ſixteen inches fiſh, and more; nor any trowt not being in length eight inches, or more; nor any barbel, not being in length twelve inches, or more.

Of what meſh each net ſhall be.

And to the intent the ſaid young fry, brood, or ſpawn, may be preſerved according to the true meaning hereof, Be it it further enacted by the authority aforeſaid, That no manner of perſon or perſons, from and after the firſt day of *June* next coming, ſhall fiſh, or take fiſh with any manner of tramell, kepe, wore, hivie, crele, or by any other engine, device, ways or means whatſoever, in any river or other places abovementioned, but only with net or tramell, whereof every meſh or mask ſhall be two inches and a half broad, angling excepted.

What nets or other devices may be uſed for the taking of ſmall fiſh.

Provided nevertheleſs, and be it enacted by authority aforeſaid, That in all ſuch places where ſmelts, loches, minnies, bulheads, gudgeons, or eeles have been uſed to be taken and killed, that in all ſuch places, it ſhall be lawful only for the taking of ſmelts, loches, minnies, gudgeons and eeles, to uſe ſuch nets, lepes, and other engines, devices, ways and means, as heretofore have been uſed for the taking of the ſame; ſo that ſuch perſon or perſons uſing or occupying ſuch nets or other engines, as is laſt aforementioned, do not take, kill, or deſtroy any other fiſh with the ſaid nets or engines, contrary to the tenour and form above in this ſtatute contained.

The penalty of the offender.

And be it further enacted, That if any perſon or perſons, after the aboveſaid day limited in this preſent act, offend in any of the points before rehearſed, contrary to the tenor, form, and purpoſe of any part of the ſame, that then every ſuch perſon and perſons, ſo offending, ſhall loſe and forfeit, for every time of his or their offence, the ſum of twenty ſhillings, and the fiſh ſo taken contrary to the tenor hereof, and alſo the unlawful nets, engines, devices, and inſtruments whatſoever they be, wherewith or whereby ſuch offence ſhall fortune to be made, committed or done.

What perſons ſhall have authority to enquire of and determine the offences aforeſaid, and who ſhall have the forfeitures.

And to the intent that a perfect execution may be had of this preſent act, Be it further ordained by authority aforeſaid, That the lord admiral of *England*, and the mayor of the city of *London* for the time being, and all and every other perſon and perſons, bodies politick and corporate, which by grant or other lawful ways or means, lawfully have, or ought to have any conſervation or preſervation of any rivers, ſtreams, or water, or puniſhment and corrections of offences committed in any of them, ſhall have full power and authority, by virtue of this act, to enquire of all the offences to be committed and done contrary to the effect and true meaning of this act, within his or their ſuch lawful rule, government, juriſdiction and conſervancy, by the oaths of twelve men or more, and to hear and determine all and every the ſame offences committed within his or their juriſdiction, conſervancy, rule and government.

And that all ſuch pains and forfeitures, as ſhall riſe or grow by the reaſon of any ſuch conviction for any the offences aforeſaid, ſhall be to the uſe of every of the ſaid perſon and perſons, being no body politick or corporate, nor head of any body politick or corporate, before whom ſuch conviction, as is aforeſaid, ſhall be had, and to the uſe of every ſuch body politick and corporate, as heretofore have lawfully had any fines, forfeitures, and amerciaments for any offence unlawfully committed or done, in any ſuch their juriſdiction, or conſervancies, upon conviction had before the head of any ſuch body politick or corporate.

And that alſo the lord of every leet within this realm of *England* and *Wales*, or the dominions of the ſame, ſhall have full power and authority to enquire of all the offences contrary to the purport, tenour, and form of this eſtatute within the precinct to their ſaid leet: ſuch enquiry to be had in manner and form, and after ſuch ſort, as common amerciaments, or other things inquirable in their court leet, have been lawfully uſed and accuſtomed to be had and made.

And that upon every ſuch preſentment had in any court or leet, by the oath of twelve men or more, as is aforeſaid, of any offence or offences made contrary to the tenour of this ſtatute: That then all ſuch forfeitures above in this eſtatute limited and appointed for ſuch offence, ſhall be unto the lord of the ſaid leet for the time being, to his own uſe for ever, and ſhall be levied in ſuch manner and form,

form as amerciaments for affairs committed within the precinct of ſuch leet have been uſed and accuſtomed to be levied.

The forfeiture of the ſteward of a leet, that doth not give this ſtatute in charge.

And if any leet, after the ſaid firſt day of *June*, be kept within this realm of *England* or *Wales*, or the dominions thereof, and the ſteward of the ſaid leet for the time being, or other for him, do not charge the jury ſworn in ſuch leet, to inquire of all the offences done within the precinct of the ſaid leet, contrary to the tenour and form of this eſtatute: that then the ſteward of the ſaid leet to loſe and forfeit forty ſhillings: the one moiety of which forfeitures ſhall be to the queen's majeſty, her heirs and ſucceſſors, and the other moiety to him that will ſue for the ſame. And if any jury ſworn in any leet, and being charged to inquire of the offences committed within the precinct of that leet, do lawfully and willingly conceal and make default in preſentment, or do not preſent the offence and offenders: that then it ſhall be lawful to the ſteward or baily of the leet, or his or their deputy for the time being, to impanel one other jury within the ſaid leet, and to inquire of ſuch concealment, default, or non-preſentment, and that upon ſuch concealment, default, or non-preſentment found and preſented, every of the ſaid jurors, which ſo did conceal, make default, or not preſent, ſhall loſe and forfeit for every ſuch offence xxs. to the lord of the ſaid leet, the ſame to be levied in manner and form as is aforeſaid, for the other offences limited and expreſſed.

The forfeiture of a jury in a leet, that doth conceal any offence.

Who may puniſh the ſaid offences, if they be not preſented in the leet.

And it is further enacted by authority aforeſaid, That if the offences above mentioned touching the taking, killing, or deſtroying of fiſh, or fry, and ſpawn, be not preſented at the leet where they ſhall be committed, within one year next after the offence committed, that the juſtices of peace in their ſeſſions, juſtices of *Oyer* and *Determiner*, and juſtices of aſſize in their ſeveral circuits, ſhall have full power and authority to enquire thereof, and to hear and determine all the offences committed, contrary to the tenour of the eſtatute.

A ſaving of the liberties of all perſons having right to enquire of and puniſh the ſaid offences.

Saving always to all and every perſon or perſons, bodies politick and corporate, and every of them, all ſuch right, title, intereſt, claim, privilege, and conſervation, and enquiry, and puniſhment of and for the offences aforeſaid, as they or any of them lawfully have and enjoy, or of right ought to have and enjoy, by any manner of means in this act to the contrary notwithſtanding.

To what perſons or waters this ſtatute doth not extend.

Provided always, That this act, nor any thing therein contained, ſhall not extend to the fiſhing of the river or water of *Tweed*; nor to any river or water whereof the queen's majeſty is anſwered by any yearly rent or profit; nor to the owners, farmers, and occupiers of the rivers of *Uſke*, or *Wye*, in the county of *Monmouth*, for any fiſh hereafter to be taken in any the rivers or waters before mentioned and expreſſed: But that it ſhall be lawful, at all ſeaſonable time and times hereafter, for ſuch as have or ſhall have any manner of intereſt therein, to take and fiſh the ſaid rivers and waters in ſuch manner and form, as heretofore hath been uſed and accuſtomed, not uſing any net or engine, to the intent willingly to take, kill and deſtroy the ſpawn, breed, or fry, breeding any kind of fiſh within the ſaid ſeveral rivers or waters; this act or any thing therein mentioned or contained to the contrary notwithſtanding. [By 3 *Car.* 1. *c.* 4. made perpetual, except as to this laſt ſection.]

Stat. 5 *Eliz. c.* 21. *Anno Dom.* 1564.

How perſons for unlawful fiſhing, hunting in a park, and taking of hawks or hawks eggs out of another's ground, ſhall be puniſhed.

WHERE as well the queen's majeſty, and her moſt noble progenitors, as alſo the noblemen, gentlemen, and divers other perſons of great dominions, lordſhips, manors and poſſeſſions within this realm, have of ancient and long time had, and many of them now of late, to their great coſts and charges, for the neceſſary and better proviſion and maintenance of their houſholds, have erected and made in and upon their ſeveral demeans, grounds, and poſſeſſions, as well pools, ſtagnes, ſtewes, motes, pits, or ponds, for the only increaſe of fiſh, and have ſtored the ſame with pickerel, breme, tench, carp, and divers other good kinds of fiſh, for the neceſſary increaſe of victuals, and for the better maintenance and proviſion of their houſes, as is aforeſaid, and alſo have emparked, environed, and incloſed many parcels of their ſaid demeans, ſoils, grounds and poſſeſſions for the breeding, cheriſhing, and increaſe, as well of red, as fallow deer, within their ſeveral parks and incloſures, for the cauſes afore declared, and alſo have, breeding within their woods and grounds, divers eyries of hawks of ſundry kinds, to their great pleaſure and commodity: yet nevertheleſs, the ſaid ſeveral waters, grounds, parks, and incloſures ſo being had, erected, and made, and alſo being ſo ſtored and repleniſhed, have been from time to time by evil diſpoſed perſons, of a very evil, wilful and inſolent diſpoſition, and of malice and diſpleaſure, not only by night-time broken and entered into, but alſo the heads or dammes of the ſaid ponds, pools, ſtagnes, motes, ſtewes, or ſeveral waters, have been maliciouſly, wilfully and unlawfully cut out, and the pales, fences, and incloſures of the ſaid parks and grounds broken, caſt down, and ſet open, and the fiſh, deer, and hawks, within the ſame, taken, deſtroyed, carried away, and ſtolen, not only to the great loſs and damage of the owners thereof, and to the ſmall encouragement of other good ſubjects, minding the careful proviſion of ſuch neceſſary victuals, but alſo to the manifeſt emboldning of many like wilful malefactors and malicious offenders, whereby many riots, man-ſlaughters, miſchiefs, and other inconveniencies have been daily perpetrated, and are like to be committed and done, if circumſpect remedy be not hereunto provided.

The penalty for deſtroying of any pool, pond, &c. or for the taking of any fiſh, 31 H. 8. 2.

Be it therefore enacted by the queen's majeſty, the lords ſpiritual and temporal, and the commons of this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, after the feaſt of Pentecoſt next coming, ſhall at any time, by day or by night, unlawfully, without authority, break, cut down, cut out, or deſtroy any head or heads, dam or dams of any ponds, pools, motes, ſtagnes, ſtewes, or ſeveral pits, wherein fiſh are, or ſhall happen to be put in or ſtored withal by the owners or poſſeſſioners thereof, or do or ſhall wrongfully fiſh in any of the ſaid ſeveral ponds, pools, motes, ſtagnes, ſtewes or pits, to the intent to deſtroy, kill, take or ſteal away any of the ſame fiſh, againſt the will, mind, or pleaſure of the owners, or poſſeſſioners of the ſame, not having any lawful title or authority ſo to do, and thereof be lawfully convicted, at the ſuit of our ſovereign lady the queen, her heirs, or ſucceſſors, or the party grieved, ſhall ſuffer impriſonment of his or their bodies by the ſpace of three months, and ſhall yield and pay to the party grieved, his treble damages; and after the ſaid three months expired ſhall find ſufficient ſureties for his or their good abearing againſt the queen our ſovereign lady, her heirs, and ſucceſſors, and all her liege people for the ſpace of ſeven years after; or elſe ſhall remain and continue ſtill in priſon without bail or mainprize, until ſuch time as he or they, ſo offending, can and ſhall find ſufficient ſureties, during the ſaid time and ſpace of ſeven years, as is aforeſaid.

The penalty for breaking a park, and hunting of deer.
3 Jac. 13. 1.
1 Jac. 27.
Cok. pla. fol. 361.

And be it alſo enacted by authority of this preſent parliament, That if any perſon or perſons, after the ſaid feaſt of Pentecoſt, next coming, at any time by night or by day, in manner aforeſaid, wrongfully or unlawfully break or enter into any park impaled, or any other ſeveral ground cloſed with wall, pale, or hedge, and uſed for the breeding, and cheriſhing of deer, and ſo wrongfully hunt, drive, or chaſe out, or take, kill, or flea any deer within any ſuch impaled park, or cloſed ground, with wall, pale, or other incloſure, and uſed for deer, as is aforeſaid, or do, or ſhall take away any hawk or hawks, or the eggs of any of them, by any ways or means unlawfully out of any the woods or ground of any perſon or perſons (not having lawful authority or licenſe ſo to do) and thereof be lawfully convicted at the ſuit of our ſovereign lady the queen, or the party grieved, as is aforeſaid; ſhall likewiſe ſuffer impriſonment of his or their bodies by the ſpace of three months, and ſhall yield and pay to the party grieved his treble damages. And after the ſaid three months expired, ſhall find good ſureties for his or their good abearing, for the ſpace of ſeven years after, againſt the queen's majeſty, her heirs, and ſucceſſors, and all her liege people, as is aforeſaid; or elſe ſhall remain and continue ſtill in priſon, without bail or mainprize, until ſuch time as he or they, ſo offending can and ſhall find ſuch ſufficient

The penalty for taking of hawks or hawks eggs out of another's ground.

ſureties during the ſaid time of ſeven years, as is afore rehearſed.

Provided always, That this act, or any thing therein contained, extend not to any park, or incloſed ground hereafter to be made and uſed for deer, without the grant or licence of our ſovereign lady the queen, her heirs, ſucceſſors, or progenitors.

A park incloſed without licence of the queen, &c.

Provided always, and be it enacted by the authority aforeſaid, That it ſhall be lawful for the party grieved to ſue and take his further remedy againſt all and every ſuch offender and offenders, for his loſs and damages, and to recover the treble value of the ſame in this behalf, as well before juſtices of *Oyer* and *Determiner*, juſtices of aſſizes in their circuits, and juſtices of the peace, as elſewhere, in any other the queen's courts of record, and that upon the true ſatisfaction of the ſaid treble damages to the party grieved, or upon the confeſſion and knowledge thereof by the ſame party, before the ſaid juſtices in open ſeſſions to be holden within the county where the offence was committed; it ſhall be at the liberty of the ſame party grieved, to whom the ſaid offence was committed, to releaſe at his pleaſure the ſaid ſuretiſhip of good abearing, at any time within the ſaid ſeven years, or before; any thing in this preſent act before ſpecified or expreſſed to the contrary notwithſtanding.

The remedy of the party grieved, and before whom.

The party grieved may releaſe the ſuretiſhip of good abearing.

And be it further enacted by the authority aforeſaid, That the juſtices of *Oyer* and *Determiner*, juſtices of aſſize in their circuits, and juſtices of the peace and gaol-delivery in their ſeſſions, ſhall, by virtue hereof, have power

What juſtices may hear and determine the offences aforeſaid.

and authority to enquire, hear, and determine all and ſingular the offences aforeſaid, and to make and award proceſs thereupon, as well upon indictments taken before them, as by bill of complaint, information, or any other action; in which ſuit or action no eſſoign, wager of law, nor protection ſhall be allowed.

In what caſe the juſtices of peace may releaſe the offender of the good abearing.

And be it further enacted by the authority aforeſaid, That if any perſon or perſons, at any time hereafter, ſhall fortune to be bound before any of the juſtices before mentioned, to the queen, her heirs, or ſucceſſors, for his or their good abearing for ſeven years, according to the tenour of this act, and the ſame party or parties ſo bound, ſhall afterwards, within the ſaid ſeven years, come before the juſtices of the peace of the ſaid county where the ſaid offence was committed, or ſome of them, in open ſeſſions, and there in the ſaid open ſeſſions confeſs and acknowledge his or their ſaid offence or offences, and be ſorry therefore, and ſatisfy the party or parties grieved, according to the tenour of this act; that then the ſaid juſtices, before whom the confeſſion ſhall be ſo made, ſhall and may have power and authority, by virtue of this act, in the ſame open ſeſſion, or in any other open ſeſſion afterwards to be holden before the ſaid juſtices in the ſaid county, within the ſaid term of ſeven years, if it ſhall ſeem good to their diſcretions, to diſcharge the ſaid recognizance and bond ſo taken, and alſo the ſaid party and parties ſo bound; this act or any thing therein contained to the contrary notwithſtanding.

Stat.

Stat. 3 *Jac.* 1. *c.* 12. *An. Dom.* 1605.

The forfeiture for ſetting up of a new wear, or for deſtroying the ſpawn or fry of fiſh.

1. FORASMUCH as it is certainly known by daily experience, that the brood of ſea-fiſh is ſpawned and lieth in ſtill waters, where it may have reſt to receive nouriſhment, and grow to perfection, and that it is there deſtroyed by wears, draw-nets, and nets with canvas, or like engines, in the middle or boſome of them, in harbours, havens and creeks within this realm, to the great damage and hurt of fiſhermen, and hindrance of the commonwealth; for that every wear near the main ſea taketh in twelve hours ſometimes the quantity of five buſhels, ſometimes ten, ſometimes twenty or thirty buſhels of the brood of ſea-fiſh, and alſo thoſe which uſe drawnets, nets with canvas or engines in the midſt of them do, every day they fiſh, deſtroy the brood of all the ſorts of fiſh aforeſaid in great multitudes.

Cauſes of the deſtruction of the brood of fiſh.

2. For reformation whereof, Be it enacted by the authority of this preſent parliament, That every perſon and perſons, that from and after the five and twentieth day of *July* next enſuing this ſeſſion of parliament, ſhall erect or ſet up any new wear or wears along the ſeaſhore, or in any haven, harbour, or creek, or

The forfeiture for deſtroying the ſpawn, fry, or brood of ſea fiſh.

or within five miles of the mouth of any haven or creek, or ſhall willingly take, deſtroy or ſpoyl any ſpawn, fry, or brood of any ſea-fiſh, in any wear or other engine or device whatſoever, ſhall forfeit for every time ſo erecting, ſetting up, taking, deſtroying or ſpoiling contrary to this act, the ſum of ten pounds of good and lawful money of *England*; the one half to the king's majeſty, his heirs or ſucceſſors, and the other half to him that will ſue for the ſame: and that every perſon which in any haven, harbour, creek, or within five miles of the mouth of any haven, harbour, or creek of the ſea, ſhall fiſh with any draw-net or drag-net under three inches meaſh, *viz.* an inch and a half from knot to knot, except for the taking of ſmoulds in *Norfolk* only, or with any net with canvas, or other engine or device, whereby the ſpawn, fry or brood of ſea-fiſh may be deſtroyed, ſhall forfeit ſuch net, and alſo forfeit for every time ſo doing, ten ſhillings of lawful money of *England*; the one half to the uſe of the poor people of the city, town corporate, borough, market-town, pariſh or liberty where the offence or offences ſhall be committed, and the other half to the perſon that ſhall ſue for the ſame: the ſaid forfeitures to be levied to the uſes aforeſaid, by the mayor, bailiff, or other head officer of every city, borough, or town corporate, and by warrant of one or more juſtices of peace, it ſhall be lawful for the conſtables and churchwardens of every market-town, pariſh or liberty within which any ſuch offences ſhall be done,

The forfeiture for fiſhing with certain nets and engines.

done, by way of diſtreſs and ſale of the offender's goods, rendring to them the ſurpluſage, according to the order of the former ſtatutes in ſuch caſes of forfeitures ordained.

What ſort of fiſh may be taken with the nets prohibited.

3. Provided always, this act, or any thing therein contained, ſhall not extend to puniſh any perſon or perſons for uſing any net or nets of leſſer meaſh than is by this ſtatute appointed, only for taking of herrings, pilchards, ſprats or lavidnian; any thing in this act to the contrary in any wiſe notwithſtanding.

4. Provided further, that this act ſhall not extend to the iſle and county of *Angleſey*.

Stat. 4 & 5 *Will. & Ma. c.* 23.

Perſons not owners of fiſheries may not keep nets, &c.

Sect. 5. AND whereas divers idle, diſorderly, and mean perſons have and keep nets, angles, leaps, piches, and other engines for the taking and killing of fiſh out of the ponds, waters, rivers, and other fiſheries, to the damage of the owners thereof; Be it therefore enacted by the authority aforeſaid, That no perſon or perſons whatſoever ſhall and may at any time or times, from and after the five and twentieth day of *March*, which ſhall be in the year of our lord one thouſand ſix hundred ninety-three, have or keep any net, angle, leap, piche, or other engine for the taking of fiſh (other than the makers and ſellers thereof, for their better conveniency in the ſale of the ſame; and other than the owner and occupier of a river or fiſhery for the time being); and moreover, That it ſhall and may be lawful, not only for the owner or occupier of any river or fiſhery, and alſo for all and every other perſon or perſons, by him or them for that purpoſe appointed, to ſeize, detain and keep to his and their own uſe and uſes, all and every net, angle, leap, piche, and other engine, which he or they ſhall find uſed or laid, or in the cuſtody or poſſeſſion of any perſon or perſons whatſoever, fiſhing in any river or fiſhery whatſoever, without the conſent of the owner or occupier thereof, but alſo for any perſon or perſons whatſoever (being thereunto authorized by warrant under the hand and ſeal of any juſtice of the peace of the ſame county, diviſion, borough, town corporate, or any other place (in the day time) to ſearch the houſes, outhouſes, or other places of any perſon or perſons hereby prohibited to have or keep the ſame, as ſhall be ſupected to have or keep in his or their cuſtody or poſſeſſion any net, angle, leap, piche, or other engine aforeſaid, and the ſame and every or any of them to ſeize, detain and keep to his and their own uſe and uſes, or otherwiſe to cut in pieces, or deſtroy, as things by this act prohibited to be kept by perſons of their degree.

Owner of fiſhery may ſeize nets, &c. uſed in his fiſhery, and any perſon may ſearch by warrant for nets, and diſpoſe of them as he will.

6. Provided always, that this act, or any thing therein contained, ſhall not extend or be conſtrued to extend to abridge any fiſherman or his apprentice, or apprentices, lawfully authorized to fiſh in navigable rivers or waters,

Fiſhermen, &c. lawfully authorized excepted, waters, with lawful nets and engines, but that every of them ſhall and may (according to the laws and orders made, and to be made and ſettled for the good order, rule, and government of ſuch navigable rivers and waters) uſe the trade of fiſhing, as they lawfully might have done before the making of this act; any thing in this act contained to the contrary in any wiſe notwithſtanding.

No Certiorari of conviction except party convicted give fifty pounds ſecurity to pay coſts.

7. And whereas divers offenders duly convicted do commonly procure writs of *Certiorari*, to remove ſuch convictions into ſuperior courts at *Weſtminſter*, in hopes thereby to diſcourage and weary out ſuch perſons injured by great delays, expences, and incertainties; Be it therefore enacted, That no *Certiorari* ſhall be allowed to remove any conviction made, or other proceeding of, for, or concerning any matter or thing in this act, unleſs the party or parties, againſt whom ſuch conviction ſhall be made, ſhall before the allowance of ſuch *Certiorari* become bound to the perſon or perſons proſecuting in the ſum of fifty pounds, with ſuch ſufficient ſureties, as the juſtice or juſtices of the peace, before whom ſuch offender was convicted, ſhall think fit, with condition to pay unto the ſaid proſecutors (within one month after ſuch conviction confirmed, or *Procedendo* granted) their full coſts and charges to be aſcertained upon their oaths; and that in default thereof it ſhall be lawful for the ſaid juſtice and juſtices, and others, to proceed to the due execution of ſuch conviction, in ſuch manner as if no *Certiorari* had been awarded.

Perſon puniſhed by this act, puniſhable no other way.

8. Provided, that where any offender ſhall be puniſhed by force of this act, he ſhall not be proſecuted nor incur the penalty of any other law or ſtatute for the ſame offence.

Proſecutor upon this act ſued may plead general iſſue, and recover treble coſts.

9. Provided always, That if any action, bill, plaint, or ſuit ſhall, at any time after the ſaid five and twentieth Day of *March*, be commenced or brought againſt any perſon or perſons whatſoever, for or by reaſon of any matter or thing which he or they ſhall do in purſuance of this act, it ſhall and may be lawful to and for the perſon or perſons, ſo ſued or proſecuted, to plead the general iſſue and give this act, or any other ſpecial matter in evidence; and if the verdict ſhall paſs with the defendant or defendants in ſuch action, or the plaintiff or plaintiffs become nonſuit, or ſuffer any diſcontinuance thereof, that in any ſuch caſe ſuch defendant or defendants ſhall have his or their treble coſts, which he or they ſhall have ſuſtained in defence of ſuch action or Suit, for which the ſaid defendant or defendants ſhall have the like remedy, as in other caſes where coſts by the laws of this realm are given to the defendants.

Tradeſmen, &c. liable to this act, and treſpaſs lies for coming on another man's ground, in which coſts are given.

10. And whereas great miſchiefs do enſue by inferior tradeſmen, apprentices, and other diſſolute perſons neglecting their trades and imployments, who follow hunting, fiſhing, and other game, to the ruin of themſelves, and damage of their neighbours; for remedy whereof be it enacted by the authority aforeſaid, That if any ſuch perſon, as aforeſaid, ſhall preſume to hunt, hawk, fiſh, or fowl (unleſs in company with the maſter of ſuch

apprentice, duly qualified by law) ſuch perſon or perſons ſhall be ſubject to the penalties of this act, and ſhall or may be ſued and proſecuted for their wilful treſpaſs in ſuch their coming on any perſon's land, and if found guilty thereof the plaintiff ſhall not only recover his damages thereby ſuſtained, but his full coſts of ſuit; any former law to the contrary notwithſtanding.

Stat. 10 & 11 *Will.* 3. *c.* 24. *Anno Domini* 1699.

An act for making *Billingſgate* a free market for ſale of fiſh.

1. WHEREAS the public wealth, honour, and ſafety of this kingdom, as well as the maintenance of trade, and ſupport of navigation, as in many other reſpects, depend on the improvement and encouragement of the fiſhery, and *Billingſgate* having, time out of mind, been a free market for all manner of floating and ſalt fiſh, as alſo for all manner of lobſters, and ſhell fiſh; nevertheleſs, divers abuſes, evidently deſtructive to that trade, have been of late years practiſed by raiſing new impoſitions and tolls, and by foreſtalling of the markets, and other methods uſed by the fiſhmongers, in not permitting the fiſherwomen and others to buy the ſaid fiſh of the ſaid fiſhermen, to ſell them again in *London* and elſewhere; by which means the fiſhermen are obliged to ſell their fiſh to the

ſaid fiſhmongers at their own rates, to the great diſcouragement of the ſaid fiſhermen: for remedy whereof, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the tenth day of *May*, which ſhall be in the year one thouſand ſix hundred ninety-nine, *Billingſgate* market, within the ſaid city of *London*, ſhall be every day in the week (except *Sundays*) a free and open market for all ſorts of fiſh whatſoever; and that it ſhall and may be lawful for any perſon or perſons to buy or ſell any ſort of fiſh in the ſaid market, without any diſturbance or moleſtation whatſoever.

2. And for the better encouraging the ſaid fiſhery, Be it further enacted by the authority aforeſaid, That no fiſherman or other perſon or perſons, ſelling any ſort of ſea fiſh in the ſaid market, ſhall, from and after the ſaid tenth day of *May* one thouſand ſix hundred ninety-nine, pay to any perſon or perſons any other toll or duty whatſoever, for coming with his boat or veſſel, or landing, ſtanding, being, or ſelling, in or at the ſaid market of *Billingſgate*, than is herein after mentioned, that is to ſay,

For every veſſel with ſalt fiſh, for groundage, eight pence *per* day, and twenty pence *per* voyage for every ſuch veſſel, and no more, in full for all duties and demands; to be diſpoſed of and diſtributed, as the lord mayor and court of aldermen ſhall yearly order and direct, according to the right of the reſpective perſons intitled thereunto.

For every lobſter boat, for groundage *per* day two pence, and *per* voyage thirteen pence, and no more, in full for all duties and demands to be diſpoſed of and diſtributed; as aforeſaid.

For every veſſel of freſh ſea fiſh, for groundage *per* day, two pence, and *per* voyage thirteen pence, and no more, in full for all duties and demands; to be diſpoſed of and diſtributed as aforeſaid.

For every dogger boat or ſmack with ſea fiſh, for groundage *per* day two pence, and *per* voyage thirteen pence, and no more, in full for all duties and demands; to be diſpoſed of and diſtributed as aforeſaid.

For every oyſter veſſel or cock, for groundage *per* day two pence, for metage one halfpeny *per* buſhel, and no more, and *per* voyage thirteen pence, and no more, in full for all duties and demands; to be diſpoſed of and diſtributed as aforeſaid.

3. And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for any perſon or perſons whatſoever, who ſhall buy any fiſh in the ſaid market, to ſell the ſame again in any other market, place or places within the ſaid city of *London*, or elſewhere, by retail: except nevertheleſs, that none but fiſhmongers ſhall be permitted to ſell in publick or fixed ſhops or houſes, being ſound and wholeſome fiſh, without any lett or diſturbance from any perſon or perſons whatſoever for ſo doing;

any law or ſtatute to the contrary thereof in any wiſe notwithſtanding.

4. Provided nevertheleſs, That this act ſhall not extend to alter any law now in being, concerning fiſh caught by foreigners.

5. And whereas in the fifth year of the reign of queen *Elizabeth*, among other things, it was enacted, That from and after the firſt day of *May*, then next coming, it ſhould not be lawful to any perſon and perſons, in any port, city, town, or market, or other place within this realm, to ſet price, make any reſtraint, or take or demand toll or tax of any ſea fiſh to be brought into this realm, or any part thereof, being taken by any of her majeſty's ſubjects, in ſhips and other veſſels of the ſame ſubjects; upon pain to every perſon offending contrary to the meaning thereof, to forfeit the value of the fiſh ſo reſtrained, prized, tolled, or taken; any liberty, cuſtom, grant, privilege, or other matter whatſoever to the contrary in any wiſe notwithſtanding; yet contrary to the true meaning thereof, ſeveral tolls, ſamples, and other exactions, have been demanded and taken of ſea fiſh: Be it therefore enacted by the authority aforeſaid, That from and after the ſaid tenth day of *May*, any perſon or perſons, taking or demanding any toll or ſample, or any other impoſition, or ſet price of any ſea fiſh whatſoever of *Engliſh* catching, ſhall forfeit the ſum of ten pounds, the one moiety thereof to his majeſty, and the other moiety to ſuch perſon as ſhall ſue for the ſame.

Penalty on demanding a ſample of ſea fiſh.

6. And

Penalty on fiſhmonger buying fiſh, except for his own ſale.

6. And whereas of late years, an evil practice hath been uſed by the fiſhmongers, in imploying one or two perſons at the moſt, to buy up all or the greateſt part of the fiſh which is brought to the ſaid market at *Billingſgate*, and afterwards dividing the ſame amongſt the fiſhmongers by lots, by reaſon whereof the fiſhmongers buy and ſell at what rate they pleaſe; Be it therefore enacted by the authority aforeſaid, That no ſuch practices ſhall be at any time hereafter uſed or allowed.

7. And for the better preventing the ſame, or the like evil practices for the time to come, Be it further enacted, That no perſon or perſons whatſoever, ſhall at any time after the ſaid tenth day of *May* one thouſand ſix hundred ninety nine, imploy or be imployed by any other perſon or perſons, in buying in or at the ſaid market of *Billingſgate*, any quantity of fiſh, to be divided by lots or in ſhares amongſt any fiſhmongers, or other perſons, in order to be afterwards put to ſale by retail or otherwiſe; nor ſhall any fiſhmonger, at any time, after the ſaid tenth day of *May*, ingroſs or buy in the ſaid market of *Billingſgate*, any quantity of fiſh, but what ſhall be for his own ſale or uſe, and not for or on the behalf of any other fiſhmonger to expoſe to ſale; under pain of forfeiting for each ſuch offence the ſum of twenty pounds, one moiety thereof to the uſe of the poor of the pariſh where ſuch offence ſhall be committed, and the other moiety to his or their own uſe who ſhall ſue for the ſame; and that from and

Size of lobſters for ſale.

and after the ſaid tenth day of *May*, no fiſherman, or other perſon or perſons, ſhall bring on ſhore, or put to ſale any lobſters, that are not eight inches from the peak of the hole unto the end of the middle fin of the tail; under pain of forfeiting for every ſuch lobſter the ſum of one ſhilling, the one moiety to the poor of the pariſh where the offence ſhall be committed, the other moiety to the proſecutor, to be recovered upon conviction before the chief magiſtrate of any city or town corporate, or before the next juſtice of peace where ſuch offence ſhall be committed.

Fiſh caught by foreigners, to be imported in Engliſh ſhipping only.

8. And for the better encouragement of the fiſhery of this kingdom, Be it further enacted by the authority aforeſaid, That from and after the ſaid tenth day of *May*, no fiſh (except ſtock fiſh and live eels) taken or caught by any foreigners, aliens to this kingdom (except proteſtant ſtrangers inhabiting within this kingdom) ſhall be imported in any foreign ſhip, veſſel, or bottom, not being wholly *Engliſh* property, and uttered, ſold or expoſed to ſale in this kingdom; under the pain of the forfeiture of ſuch ſhip, veſſel or bottom, with the tackle thereunto belonging, and of all ſuch fiſh ſo imported and ſold, contrary to the true intent and meaning hereof; one moiety thereof to the uſe of the poor of the pariſh where the ſame ſhall be ſo found or ſeized, the other moiety to his or their own uſe who ſhall ſo ſeize the ſame.

Exception.

9. Provided nevertheleſs, That nothing in this act contained ſhall be conſtrued to pro-

hibit the importation of anchovies, ſturgeon, botargo or cavear, nor ſelling of mackarel before or after divine ſervice on *Sundays*.

Former duty on cod and ling continued.

10. Provided always, That nothing in this act contained ſhall be conſtrued to take away any ancient duty of cod and ling, payable to the kings of this realm, for the ſervice of their houſhold, by ſuch merchants as trade to *Weſtmoney* and *Iſeland*, but that the ſame may be taken by his majeſty's officers, in ſuch manner as the ſame hath been lawfully uſed to be taken before the making of this act.

Stat. 4 & 5 *Ann. cap.* 21.

An act for the encreaſe and better preſervation of ſalmon and other fiſh, in the rivers within the counties of *Southampton* and *Wilts*.

Preamble.

1. WHEREAS the ſalmon and ſalmon-kind of fiſh, reſorting to ſpawn within the rivers and freſhes in the counties of *Southampton*, and ſouthern parts of *Wiltſhire*, are in danger of utter decay, to the great loſs of this kingdom; and the royalties and fiſheries in the ſaid counties are in a great meaſure conſumed and deſtroyed, by placing divers engines and other devices in and upon the main rivers, and in the new chanels, dikes, and cuts, which now are or ſhall be cut out of the ſame rivers, by means whereof the ſalmon ſtrikes or kippers, as well as the young fry or ſmelts, are taken and deſtroyed,

and are prevented from returning to the ſea in ſeaſon: and whereas the owners and occupiers of the ſalmon fiſheries within the ſaid counties, regarding only their private and greedy profit, do deſtroy the ſtock of the ſaid fiſheries, by preventing the breed of good fiſh, to paſs in ſeaſon through their fiſhing wyres and fiſhing hatchways from the ſea into the ſaid rivers to ſpawn, and by killing ſuch as are under ſize, and by fiſhing continually out of ſeaſon at and in the ſaid fiſhing wyres and creeks of the rivers, with nets and other devices, whereby not only the encreaſe of the ſpecies of the ſaid fiſh, but alſo the growth thereof, is in great meaſure deſtroyed: and whereas notwithſtanding the many good laws before this time made and ſtill in force, with intent to prohibit unlawful killing or otherwiſe deſtroying the game of this kingdom, divers ſturdy and diſorderly perſons (through defect in the ſaid laws for ſufficiently puniſhing of offenders, and neglecting their lawful employments) do poach with nets and angles, gins and other unlawful engines, and by unlawful means in the night, and at other times, do take, kill, and deſtroy the fiſh, to the great detriment of the lords of manors, and the other owners and occupiers of fiſheries in the ſaid county of *Southampton*, and ſouthern parts of *Wiltſhire*: for remedy whereof be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That the ſtatute

Salmon fiſheries in the counties of Southampton and Wilts.

ſtatute made in the fourth and fifth year of the reign of king *William* and queen *Mary*, now in force for the better preſervation of the game, relating to ſalmon-fiſhing, and every article and thing therein contained, ſhall be duly put in execution, according to the tenor of the ſame, and that the ſtatute made in the thirteenth year of king *Edward* the firſt, whereby it is provided that the waters of *Humber*, *Owſe*, *Trent*, *Dover*, *Arre*, *Derwent*, *Wherſe*, *Niddiore*, *Swale*, *Teſe*, *Tine*, *Eden*, and all other waters wherein ſalmon be taken, ſhall be in defence from taking Salmon, from the nativity of our lady, unto St. *Martin*'s day; and likewiſe that young ſalmon ſhall not be taken nor deſtroyed by nets, nor by other engines, at mill-pools, from the midſt of *April* unto the nativity of St. *John* the Baptiſt, and in places where freſh waters be; ſhall extend and be in full force, as well to all and every the rivers, creeks, and waters in the county of *Southampton*, and ſouthern parts of *Wiltſhire*, as to the waters in the laſt mentioned act here above enumerated and contained, and in the like manner, and under the ſame pains and penalties as therein mentioned and expreſſed.

Act 4 & 5 W. & M. c. 23. for the better preſervation of ſalmon fiſhing to be put in execution: alſo ſtat. 13 E. 1. c. 47.

No young ſalmon to be deſtroyed by nets, &c.

2. And be it further enacted by the authority aforeſaid, That there ſhall be aſſigned overſeers of this ſtatute by any two or more juſtices of the peace, reſiding within five miles of the reſpective rivers within the ſaid counties of *Southampton* and *Wiltſhire*, under their hands and ſeals from time to time, who being ſworn before the ſaid juſtices of the peace,

Overſeers of this act to be aſſigned by juſtices.

Who ſhall enquire after offenders.

ſhall often ſee and enquire after the offenders againſt this ſtatute, and ſhall take and apprehend all and every ſuch offender and offenders, and take and deſtroy all nets and other craft and engines, where they ſhall find the ſame, being kept, uſed, or in being contrary to this or any other act now in force relating to fiſhing; and all and every offender and offenders ſo taken or apprehended by the ſaid overſeers or any of them, or by any other lawful means, ſhall be brought before ſome juſtice of the peace of the ſaid counties, to anſwer for every ſuch offence, and being convicted before any ſuch juſtice of the peace for the ſaid counties, by one or more witneſſes upon oath (which oath the ſaid juſtice hath hereby power to adminiſter) or confeſſion of ſuch offender, ſhall for the firſt treſpaſs or offence forfeit a ſum to be aſcertained by ſuch juſtice of the peace, before whom ſuch conviction ſhall be made, not under twenty ſhillings, nor more than five pounds, and for the ſecond treſpaſs or offence ſhall forfeit a ſum not under forty ſhillings, to be aſcertained as aforeſaid, nor more than ten pounds, and as the treſpaſs or offence ſhall increaſe, to double the penalty, to be aſcertained as aforeſaid; one half thereof to be paid to the informer, and the other half thereof to the poor of the pariſh where the ſaid offence or offences ſhall be committed; and in caſe the offender or offenders ſhall not be able, or do not on demand pay the ſaid penalty or penalties, then he or they ſhall be ſent by ſuch juſtice of the peace, before whom ſuch conviction

Penalty on offenders.

viction ſhall be made, as aforeſaid, to the houſe or houſes of correction within the ſaid reſpective counties where ſuch offender or offenders ſhall be taken, and there kept for the ſpace of three months.

No perſon qualified or not, ſhall take or kill ſalmon between 30 June and 11 November.

3. And be it further enacted by the authority, aforeſaid, That no perſon or perſons (not being by law duly qualified) ſhall hereafter kill, deſtroy, or wilfully hurt any ſalmon or ſalmon-kind, or any other fiſh, and that neither they nor any other perſon or perſons whatſoever, ſhall and may at any time or times after the thirtieth day of *June*, which ſhall be in the year of our lord one thouſand ſeven hundred and ſix, take, kill, or deſtroy any ſalmon, ſalmon-peale, or ſalmon-kind, by hawks, racks, gins, nets, angles, or other devices whatſoever, until after the eleventh day of *November* in every year, or offer to ſale any of the ſaid fiſh ſo taken, under the like pains, penalties, forfeitures, and impriſonments, as are herein before mentioned.

Owners of meadow grounds to let ſalmon got into the dikes to paſs into the main rivers again.

4. And be it further enacted by the authority aforeſaid, That if any ſalmon or ſalmon-kind ſhall go into any of the dikes, cuts, or water carriages, that then all owners and occupiers of meadow grounds, in and upon the banks of any waters or rivers in the ſaid counties, within the time limited and reſtrained by the ſaid act, ſhall permit the ſaid fiſh to paſs or go out of the ſaid cuts, or dikes, or ſtreams, into the main rivers again, and not by any wilful means to deſtroy them for ſale or otherwiſe, under the like pains,

penalties, forfeitures, and impriſonment, as aforementioned.

Owners of mills to keep open one ſcuttle in the waſte hatch for the ſalmon to paſs and repaſs, &c.

5. And be it enacted by the authority aforeſaid, That all owners and occupiers of corn, fulling and paper mills, and other mills, upon any the waters or rivers in the ſaid counties, ſhall conſtantly keep open one ſcuttle or ſmall hatch of a foot ſquare in the waſte-hatch or water-courſe in the direct ſtream, wherein no water wheel ſtandeth, ſufficient for the ſalmon to paſs and repaſs freely up and down the ſaid rivers in the ſaid counties, from the eleventh day of *November* to the one and thirtieth day of *May* in every year, during which ſeaſon the old ſalmon and the young fry of the preceding year retire to the ſea, and the breeding ſalmon come from the ſea to ſpawn; and ſhall not make uſe of any nets, pots, racks, hawks, gins, or other devices whatſoever to be placed in the ſaid ſcuttle or ſmall hatch of a foot ſquare in the ſaid waſte-hatch, in or about the ſaid mills reſpectively, during the ſaid term, to kill or deſtroy, or take any ſalmon or ſalmon-kind, upon the like pains, penalties, forfeitures, and impriſonment, as aforeſaid; and in caſe they ſhall lay any pots or nets to catch eels, after the firſt day of *January* to the tenth day of *March* in every year (which they may do) they ſhall ſet racks before them, to keep out of the ſaid pots or nets the old ſalmon or kippers, which, during that ſeaſon, are out of kind, and returning to the ſea; and after the tenth day of *March* to the one and thirtieth day of *May* in every year they ſhall lay no pot,

And not uſe nets, &c.

Eel pots to have racks before them.

pot, net, or engine, but what ſhall be wide enough to let the fry of ſalmon paſs through to the ſea, or ſhall take or keep, or offer to ſale any of the young fry, that, during the ſeaſons aforeſaid, are returning from the ſaid rivers to the ſea; upon the pains, penalties, forfeitures and impriſonments, as aforeſaid.

No ſea trouts to be taken in the rivers.

6. And be it further enacted by the authority aforeſaid, That no bouges, otherwiſe called ſea trouts, ſhall be taken in any of the ſaid rivers, creeks, or arms of the ſea in the counties before mentioned, after the thirtieth day of *June* to the eleventh day of *November* every year; upon the like pains, penalties, forfeitures, and impriſonments, as aforeſaid.

None to keep nets, &c. other than what are allowed by act 4 & 5 W. & M.

7. And whereas divers diſorderly, idle, and mean perſons have and keep nets, angles, leaps, pitches and other engines for the taking and killing of fiſh out of the ponds, waters, rivers, and fiſheries in the ſaid counties, to the damage of the owners thereof; Be it therefore enacted by the authority aforeſaid, That no perſon or perſons whatſoever ſhall have or keep any net, angle, leap, pitch, or other engine for taking of fiſh, other than as is provided for and allowed of by an act made in the fourth and fifth years of king *William* and queen *Mary*, intituled, *An act for the more eaſy diſcovery and conviction of ſuch as ſhall deſtroy the game of this kingdom*; none of which acts, or any part or matter therein contained, or in any other act relating to the preſervation of the game of this kingdom, is not hereby intended or deemed to be repealed.

8. And

Penalties on ſelling ſalmons, &c.

8. And be it enacted, That if any perſon or perſons ſhall ſell, or expoſe to ſale any ſalmon, or ſalmon-kind in the ſaid counties, from the thirtieth day of *June* to the eleventh day of *November* in every year, ſuch perſon or perſons ſhall for every ſalmon, or ſalmon-kind ſo ſold or expoſed to ſale, be ſubject to the pains, penalties, forfeitures, and impriſonments, as aforeſaid.

Forfeitures of offenders to be levied by diſtreſs and ſale, &c.

9. And be it further enacted by the authority aforeſaid, That all the forfeitures and penalties ariſing by conviction of any offender or offenders againſt this act, ſhall be levied by diſtreſs and ſale of the offender's goods, by warrant under the hand and ſeal of the juſtice before whom the offender or offenders ſhall be convicted, rendering the overplus, if any be; and for want of diſtreſs, the offender or offenders ſhall be committed to the houſe or houſes of correction in the ſaid counties, as aforeſaid.

Extent of the act.

10. Provided always, That this act, or any thing herein contained, ſhall not extend or be conſtrued to extend to any county or place in this kingdom, ſave only to the ſaid county of *Southampton*, and the ſouthern parts of *Wiltſhire*; any thing herein contained to the contrary notwithſtanding.

Stat. 9 *Ann.* *c.* 26. *Anno Dom.* 1710.

An act for the better preſervation and improvement of the fiſhery within the river of *Thames*, and for regulating and governing the company of fiſhermen of the ſaid river.

I. WHEREAS the preſervation of the fiſhery of the river of *Thames*, and the good government of the company of fiſhermen of the ſaid river, are not only highly neceſſary for furniſhing her majeſty's ſubjects inhabiting within the cities of *London* and *Weſtminſter*, and the parts adjacent, with good, wholeſome, cheap, and ſeaſonable fiſh, but likewiſe advantageous to her majeſty, and the trade of this kingdom, in breeding up able-bodied ſea-faring men, and preventing frauds committed in running of goods and merchandizes, whereby the revenues of the crown have been much leſſened; Be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the tenth day of *June* one thouſand ſeven hundred and eleven, it ſhall and may be lawful to and for the court of aſſiſtants of the ſaid company, for the time being, or the major part of them preſent, to make ſuch by-laws and ordinances for the good rule and government

After 10 June 1711. the court of aſſiſtants of the fiſhermens company may make by-laws, to be approved by the court of

Aldermen of London, who ſhall chuſe yearly out of the ſix wardens of the ſaid company, a maſter of the art of fiſhermen; and out of the twelve aſſiſtants ſix wardens (the water-bailiff of London to be one) and thirty aſſiſtants. The maſter, &c. conſtituted the court of aſſiſtants, who ſhall meet the firſt Thurſday, in every month, to regulate abuſes, &c.

ment of the ſaid company, as they ſhall think fit, ſo as the ſame be always firſt approved of, or from time to time, altered or amended by the court of the lord mayor and aldermen of the city of *London*, and likewiſe allowed and confirmed, according to the form of the ſtatute in that behalf made and provided; and that from and after the ſaid tenth day of *June* there ſhall be yearly and every year elected and choſen by the next court of lord mayor and aldermen, to be held after the ſaid tenth day of *June*, out of the ſix wardens of the ſaid company, for the time being to be nominated by the ſaid court of aſſiſtants, one fit perſon to be a maſter of the ſaid art or myſtery of fiſhermen; and alſo out of twelve aſſiſtants to be nominated, as aforeſaid, ſix fit perſons to be wardens of the ſaid art or myſtery (whereof the water-bailiff of the city of *London* for the time being ſhall be one;) and in like manner out of ſixty of the commonalty to be nominated, as aforeſaid, thirty fit perſons to be aſſiſtants of the ſaid company; which ſaid maſter, wardens, and aſſiſtants, or any ſixteen of them, together with three of the ſaid wardens, ſhall be, and are hereby conſtituted the court of aſſiſtants of the ſaid company, for the time being, and ſhall meet and aſſemble together, from time to time, on the firſt *Thurſday* in every kalendar month in the year, in the hall of the ſaid company, in order to form the ſaid court of aſſiſtants, and keep the ſame for regulating and reforming abuſes committed in the ſaid fiſhery, and for the due ordering and governance of the ſaid company; to the holding of which court the ſaid water-bailiff ſhall be always duly ſummoned to attend; and the ſaid court of aſſiſtants, or the major part of them preſent, ſhall, from time to time, call before them all and every ſuch perſon and perſons as ſhall uſe to fiſh or drudge within the limits of the ſaid fiſhery as common fiſhermen or drudgermen, and cauſe every ſuch perſon and perſons, being duly qualified, or having ſerved on board her majeſty's navy for the ſpace of two years, to have his or their name or names entered and regiſtered in a book or books to be kept by the ſaid court of aſſiſtants for that purpoſe, together with his and their reſpective places of abode, and the name of every apprentice or ſervant belonging to him or them, in uſing the trade of fiſhing or drudging within the limits; and ſhall likewiſe cauſe ſome mark of diſtinction, by figure or otherwiſe, to be placed on every boat, veſſel, and craft, which ſhall, after the ſaid tenth of *June*, be uſed in fiſhing or drudging within the limits aforeſaid; which ſaid figure or mark of diſtinction ſhall not be changed, altered, or defaced, to the end, that from time to time, and at all times hereafter, every ſuch perſon and perſons, apprentice and ſervant, as ſhall offend, contrary to the meaning of this act, may the better be detected, and that her majeſty, her heirs and ſucceſſors, may the better be enabled to know what number of able-bodied ſeamen the ſaid company can furniſh for public ſervice; and that every perſon and perſons being duly ſummoned by the direction of

They ſhall ſummon the fiſhermen, and cauſe their names to be regiſtered, &c.

ſhall cauſe marks to be put on every boat.

Every perſon ſummoned, &c. and refuſing to appear, ſhall be ſent on board the fleet, and diſabled from fiſhing for two years.

of the ſaid court of aſſiſtants, to be and appear before them, in order to be entered and ſerve on board her majeſty's navy, who ſhall, without lawful cauſe, refuſe or neglect to appear, according to the tenor of ſuch ſummons, ſhall be ſent on board her majeſty's navy, and be diſabled from fiſhing on the ſaid river of *Thames* for the ſpace of two years.

No ſpawn, &c. to be killed, &c. nor caught out of ſeaſon.

No ſalmon to be taken between 24 Aug. and 11 Nov.

2. And be it enacted by the authority aforeſaid, That no perſon or perſons whatſoever ſhall, from and after the ſaid tenth day of *June*, wilfully kill, or expoſe to ſale any ſpawn, fry, or brood of fiſh, or ſpatt of oyſters, or any unſizable, ſmall, or unwholeſome fiſh, or catch, kill, or deſtroy any fiſh out of ſeaſon, or expoſe ſuch fiſh to ſale, or wilfully or knowingly buy, harbour, receive, or uſe as food for hogs, or otherwiſe, any ſuch ſpawn, fry, brood of fiſh, or ſpatt of oyſters, unſizable, ſmall, or unwholeſome fiſh, or any fiſh caught out of ſeaſon, on pain of being puniſhed as herein after is mentioned; and that ſalmon fiſh, which are become very ſcarce by deſtroying great quantities of ſalmon, and ſalmon-kind fiſh, betwixt the twenty-fourth day of *Auguſt* and the eleventh day of *November* in every year, when they are out of ſeaſon, or ſpawning, may become very plentiful and common in the ſaid fiſhery, as they were formerly, no perſon or perſons whatſoever, ſhall preſume to fiſh for, or take and wilfully kill, hurt, or deſtroy any ſalmon, or ſalmon-kind fiſh within the ſaid limits, at any time or times betwixt the ſaid twenty-fourth day of *Auguſt* and the ſaid eleventh day

The lord mayor, &c. may order ſtakes to be fixed in the river, to preſerve the fry.

day of *November* in any year, from and after the ſaid tenth day of *June*; and that it ſhall and may be lawful for the ſaid lord mayor, upon application to him by the ſaid court of aſſiſtants, to order and direct any number of ſtakes to be driven and fixed in any place within the ſaid river, betwixt the *London* mark-ſtone above *Stanes* bridge and *London* bridge, as by him and them ſhall be thought moſt convenient for preſerving the fry, ſpawn, and brood of fiſh, ſo as the ſame be no ways prejudicial to the navigation of the ſaid river; and that no perſon or perſons whatſoever ſhall preſume, without lawful authority, to remove, looſen, or pluck up the ſame, on pain of being puniſhed as herein after is mentioned.

No fiſh ſhall be ſold more than once within Billingſgate market, &c. and none to ſell fiſh in the ſaid market, except free fiſhmongers, fiſhermen, &c.

3. And to the intent the publick may be ſerved with fiſh cheap, and at the firſt hand, and for a more ſpeedy way to puniſh offenders, who daily regrate great quantities of unſizable and unſeaſonable, as alſo other fiſh, in and at the market of *Billingſgate*; Be it therefore enacted by the authority aforeſaid, That no fiſh ſhall be ſold more than once within the ſaid market, or within one hundred and fifty yards of *Billingſgate* dock, to which all ſorts of fiſh are uſually imported; nor ſhall any perſon or perſons, other than free fiſhmongers, in their houſes and ſhops, ſituate and being within the diſtance of the ſaid one hundred and fifty yards of the ſaid dock, and not in the market of *Billingſgate* aforeſaid, and other than fiſhermen, or the firſt importers of, or perſons bringing up ſuch fiſh to the ſaid market,

their wives, apprentices, factors, or ſervants, for the time being, actually hired for that purpoſe, preſume to ſell, or expoſe to ſale any manner of fiſh whatſoever in or at the ſaid market, or within one hundred and fifty yards of the ſaid dock, after the ſaid tenth day of *June*, on pain of being puniſhed as herein after is mentioned.

The court of aſſiſtants to pay 30l. per Ann. to the water-bailiff.

4. And be it enacted by the authority aforeſaid, That the ſaid court of aſſiſtants ſhall yearly and every year, by even and equal portions, on the feaſt-days of *Eaſter* and *Michaelmas*, pay or cauſe to be paid unto the ſaid water-bailiff, or his aſſigns, the ſum of thirty pounds, free from all taxes and other incumbrances, in lieu and ſatisfaction of ſuch ancient fees as were due to him, and which will be diminiſhed or taken away, by virtue of this act, except the granting licences for taking fiſh in their ſeveral ſeaſons, according to cuſtom, the benefit whereof is hereby intended to be continued and ſaved unto the ſaid water-bailiff for the time being, over and above the ſaid ſum of thirty pounds *per Annum.*

No fiſh to be ſold in the ſaid market, &c. before three in the morning from Lady-day to Michaelmas, and five from Michaelmas to Lady-day.

5. And for the further preventing foreſtalling, regrating, and engroſſing fiſh, at unſeaſonable hours, in the market of *Billingſgate*; Be it further enacted by the authority aforeſaid, That no fiſh whatſoever ſhall be ſold or expoſed to ſale, on board or on ſhore, (within the limits of the ſaid market, or within one hundred and fifty yards of the ſaid dock, as aforeſaid) by any perſon or perſons whatſoever, before the hours of three a clock

in the morning from *Lady-day* to *Michaelmas*, and before the hours of five a clock in the morning from *Michaelmas* to *Lady-day*, and ſo annually; and that the proper officer do ring the bell appointed for that purpoſe, at the time and place aforeſaid, under the penalties to be inflicted by this act.

The Lord mayor, &c. ſhall have power to determine complaints,

6. And be it further enacted by the authority aforeſaid, That the lord mayor and aldermen of the city of *London*, or any one of them, for all offences committed within the juriſdiction of the ſaid lord mayor, as conſervator of the ſaid river of *Thames*, and the juſtices of the peace of the reſpective counties, or any one of them, for all offences committed in the ſaid limits, and out of the juriſdiction of the ſaid conſervator, ſhall have full power, upon view, or upon complaint made to them, or any one of them, to examine, hear, and determine, by the oath of any perſon, or by confeſſion of the party offending, all complaints and offences committed againſt the intent of this act, and upon conviction of ſuch offender, to impoſe a fine upon him or her, proportionable to the offence ſo committed, not exceeding the ſum of ten pounds, nor leſs than the ſum of five ſhillings; to be levied by diſtreſs, or otherwiſe, on ſuch offender's goods and chattels, at the diſcretion of the ſaid lord mayor, aldermen, or juſtices, or any one of them, unleſs ſuch offender ſhall immediately pay ſuch fine, or give good and ſufficient ſecurity to ſuch magiſtrate or magiſtrates before whom he or ſhe ſhall be ſo convicted, to ſtand to and

and impoſe a fine on offenders, not above 10l. nor leſs than 5s. to be levied by diſtreſs, unleſs paid immediately, or ſecurity given to abide the order of the ſaid court of conſervancy, &c.

abide ſuch order as ſhall be made by the court of conſervancy, held by the ſaid lord mayor, as conſervator, as aforeſaid, upon ſuch conviction as ſhall be made by the ſaid lord mayor and aldermen, or any one of them, or at the general quarter-ſeſſions, by the juſtices of the peace holding the ſame, upon any ſuch conviction made before them, or any one of them, in caſe the offender ſhall think fit to appeal to the ſaid court of conſervancy, or to the ſaid quarter-ſeſſions; and in caſe no diſtreſs or diſtreſſes can be found, the offender or offenders ſhall be ſent to the houſe of correction, there to remain without bail or mainprize, and to be kept to hard labour, for any time not exceeding two months; and that all and ſingular the forfeitures and penalties ariſing by this preſent act, for any offences contrary thereunto, committed within the juriſdiction of the ſaid conſervator, ſhall, from time to time, be paid, the one moiety to the informer, the other moiety unto the ſaid lord mayor, as conſervator of the ſaid river of *Thames*; and that all the forfeitures and penalties ariſing by this preſent act, for any offences contrary thereunto, committed out of the juriſdiction of the ſaid conſervator, ſhall, from time to time, be paid, the one moiety to the poor of the pariſh where ſuch offence ſhall be committed, and the other moiety to ſuch perſon who ſhall proſecute the ſaid offender.

If no diſtreſs, the offender to be ſent to the houſe of correction for two months.

How the forfeitures ſhall be applied.

Saving to the crown, &c. all fines, forfeitures, &c.

7. Saving always to the queen's moſt excellent majeſty, her heirs and ſucceſſors, and all bodies politick or corporate, and to the

high court of admiralty, and the court of conſervancy, and all other courts and perſons, all fines, forfeitures, penalties, amerciaments, and wreck of ſea, which of right have been reſerved, and become due and payable to the ſaid courts and perſons reſpectively, for and in reſpect of the ſaid fiſhery or drudging, or otherwiſe, and all rights, titles, eſtates, juriſdictions, privileges, franchiſes, or demands whatſoever, in as full and ample manner as the ſame were or have been before the making of this act.

This act ſhall not prejudice the rights, &c. of London.

8. Provided always, and be it enacted by the authority aforeſaid, That this act, or any thing herein contained, ſhall not extend, or be conſtrued to extend to prejudice or derogate from the rights, privileges, or authorities of the city of *London*, exerciſed by the lord mayor of the ſaid city for the time being, as conſervator of the ſaid river of *Thames* and waters of *Medway*, or elſewhere, or any of the rights of the admiralties or vice-admiralties of *Kent* or *Eſſex*, or the piſcaries of fiſhings belonging or appertaining to the ſaid city of *London*, or any other city or town corporate, or any lords of manors, proprietors, owners, or occupiers of any rivers, creeks, ſtreams, or fiſheries, adjacent to, or within any part of the ſaid limits, or to the rights of any other perſon or perſons within the limits aforeſaid.

nor of the admiralties of Kent or Eſſex, &c. nor of any lords of manors, &c.

Nor ſhall it extend to fiſhermen who dwell in the cinque-ports, Rocheſter, &c.

9. Provided always, That nothing in this act contained ſhall extend, or be conſtrued to extend to any fiſhermen or drudgermen, who now do, or ſhall hereafter inhabit or

dwell in any of the cinque-ports, or their members, or in the city of *Rocheſter*, or towns or places of *Strood*, *Chatham*, *Finſbury*, *Gillingham*, *Milton*, *Queenborough*, *Feverſham*, *Whitſtaple*, or the places adjacent; but that ſuch fiſhermen and drudgermen ſhall and may uſe and exerciſe their trades of fiſhing and drudging, and ſelling, in as full and ample a manner as they have heretofore lawfully done, to all intents and purpoſes as if this act had never been made.

It ſhall be taken as a publick act, and if an action, &c. be brought, the defendant may plead the general iſſue, &c.

10. And be it further enacted by the authority aforeſaid, That this act ſhall be deemed and taken to be, and is hereby declared to be a publick act of parliament, of which all judges, juſtices, and other perſons are to take notice; and in caſe any action, bill, plaint, ſuit, or information ſhall be commenced or proſecuted againſt any perſon or perſons for what he or they ſhall do in purſuance, or by virtue of this act, ſuch perſon or perſons ſhall and may plead the general iſſue, and give this act, and the ſpecial matter in evidence; and the defendant or defendants ſhall, in caſe the plaintiff be nonſuited, or diſcontinue his action, or that a judgment upon a demurer, or a verdict paſs againſt the plaintiff, recover his or their full coſts of ſuit, for which the ſaid defendant or defendants ſhall have the like remedy as in ſuch caſes where coſts by the laws of this realm are given to defendants.

and ſhall recover full coſts.

Saving to Margaret Cage her annuity for life.

11. Saving alſo unto *Margaret Cage* widow, her executors, adminiſtrators, and aſſigns, out of all monies ariſing to the ſaid company by

this act, and the other profits and income of the ſaid company, one annuity granted unto her, under the common ſeal of the ſaid company, for her life, and all arrears thereof, with intereſt.

Stat. 1 *Geo.* 1. *c.* 18. *A. D.* 1714.

An act for the better preventing freſh fiſh taken by foreigners being imported into this kingdom; and for the preſervation of the fry of fiſh; and for the giving leave to import lobſters and turbets in foreign bottoms; and for the better preſervation of ſalmon within ſeveral rivers in that part of this kingdom called *England.*

1. WHEREAS notwithſtanding the many good laws made for the preſervation and improvement of the fiſhery in that part of this kingdom called *England*, particularly an act of parliament made in the fifteenth year of the reign of his late majeſty king *Charles* the ſecond, intituled, *An act for the encouragement of trade*; and one other act made in the eighteenth year of the reign of his ſaid late majeſty, intituled, *An act againſt importing cattle from* Ireland, *and other parts beyond the ſeas, and fiſh taken by foreigners*, many evaſions have of late years been invented and practiſed, whereby that uſeful deſign has been very much obſtructed, and more eſpecially

15 Car. 2. c. 7.

18 Car. 2. c. 2.

eſpecially by the fraudulent practices of divers perſons trading in *Engliſh* ſmacks, and other veſſels, who when they are off at ſea, buy great quantities of fiſh caught by foreigners, and import and market the ſame in this kingdom, to the great diſcouragement and impoveriſhment of his majeſty's ſubjects, and manifeſt detriment of the fiſhery and navigation: for remedy whereof be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-ninth day of *September* one thouſand ſeven hundred and fifteen, no herring, cod, pilchards, ſalmon, or ling, freſh or ſalted, dried or bloated, nor any brill, mackarel, whiting, haddock, ſprats, coal-fiſh, bull-fiſh, congers, nor any ſort of flat-fiſh, nor any other ſort of freſh-fiſh whatſoever, ſhall be imported into, ſold, or expoſed to ſale, in that part of this kingdom called *England*, which ſhall be taken by, bought of, or received from any foreigner or foreigners, or out of any ſtranger or ſtrangers bottom, except proteſtant ſtrangers inhabiting within this kingdom; nor ſhall any perſon or perſons give or exchange any goods or other things in exchange for any ſort of fiſh, ſo taken, as aforeſaid.

After 29 Sept. 1715, no fiſh taken by foreigners, except proteſtants inhabiting in England, ſhall be imported into this kingdom.

2. And be it further enacted, That every maſter, or commander, for the time being, of any ſmack, hoy, yager, boat, ſhip, or any other veſſel, in which any fiſh ſhall be imported

Every maſter, &c. of any ſmack, &c. in which imported or brought to ſhore, contrary to the true intent and meaning of this act, being thereof lawfully convicted, upon his appearance or default made after due ſummons before one or more juſtice or juſtices of the peace of the county, city, or place, where the offender ſhall reſide, or be found, by the oath of two or more credible witneſſes (which oath ſuch juſtice or juſtices are hereby impowered and required to adminiſter) ſhall forfeit for every offence the ſum of twenty pounds of lawful money of *Great Britain*, to be levied by diſtreſs and ſale of the offender's goods and chattels, by warrant under the hand and ſeal or hands and ſeals of ſuch juſtice or juſtices, rendering to the party the overplus, if any be; and in default of payment of the ſaid twenty pounds, or ſufficient diſtreſs, the ſame juſtice or juſtices ſhall commit every ſuch offender to the common gaol of ſuch county, city or place, there to ſuffer impriſonment during the ſpace of twelve months.

any fiſh ſhall be imported, ſhall forfeit 20l. to be levied by diſtreſs,

or ſuffer 12 months impriſonment.

3. Provided, That nothing herein contained ſhall extend, or be conſtrued to extend, to prevent the importing, buying, or expoſing to ſale, any eels, ſtock-fiſh, anchovies, ſturgeon, botarge, or cavear.

This act ſhall not extend to prevent the importing of eels, &c.

4. And whereas of late years the breed and fry of ſea-fiſh has been greatly prejudiced and deſtroyed by the uſing of nets of too ſmall ſize or meſh, and by other illegal and unwarrantable practices: Be it enacted by the authority aforeſaid, That from and after the twenty-fifth day of *September* one thouſand ſeven hundred

The meſhes of nets to be of the ſize of 3 inches and a half from knot to knot;

hundred and ſixteen, if any perſon or perſons ſhall uſe at ſea, upon the coaſt of that part of *Great Britain* called *England*, any traul-net, dragg-net, or ſet-net whatſoever, for the catching of any kind of fiſh (except herrings, pilchards, ſprats, or lavidnian) which hath any meſh or moke, of leſs ſize than three inches and half at leaſt, from knot to knot, or which hath any falſe or double bottom, cod, or pouch, or ſhall put any net or nets, though of legal ſize or meſh, upon or behind the others in order to catch and deſtroy the ſmall fiſh which would have paſſed through any ſingle net of three inches and half meſh, all and every ſuch perſon and perſons, ſo offending, ſhall forfeit all and ſingular ſuch net or nets, ſo uſed contrary to the true intent and meaning hereof, and alſo for every ſuch offence the ſum of twenty pounds of lawful money of *Great Britain*, to be recovered and levied in ſuch a manner and form, as the penalty above inflicted upon the maſter of any veſſel, wherein fiſh ſhall be imported contrary to this act, is above directed to be recovered and levied; and in default of payment of the ſaid twenty pounds, or of ſufficient diſtreſs, the offender to be impriſoned in like manner, during the ſpace of twelve months.

except for catching of herrings, &c.

Nor ſhall any net, tho' of legal ſize, be put behind the others,

on penalty of forfeiture thereof, and 20l. to be recovered as above.

5. And it is hereby further enacted, That all penalties and forfeitures mentioned in this act, except nets of illegal or falſe bottoms, cods, or pouches, as aforeſaid (all neceſſary charges for the recovery thereof being firſt deducted) ſhall be diſtributed and diſpoſed of in manner following, (that is to ſay) one moiety

One moiety to the informer, the other to the poor.

moiety thereof to the informer, and the other moiety thereof to the poor of the pariſh where ſuch offence ſhall be committed.

Illegal nets to be burnt.

6. And it is hereby further enacted and provided, That where any illegal nets of leſs meſh or moke than three inches and half at leaſt from knot to knot, or of falſe or double bottom, cod, or pouch, ſhall be proved, as aforeſaid, to have been forfeited, ſuch net or nets ſhall, by warrant of ſuch juſtice or juſtices, be publickly burnt.

Penalty of ſelling unſizable fiſh.

7. And for the further preſervation of the ſaid fry of fiſh, Be it enacted by the authority aforeſaid, That if any perſon or perſons ſhall, at any time after the twenty-ninth day of *September* one thouſand ſeven hundred and fifteen, bring to ſhore, in that part of *Great Britain* called *England*, ſell, offer, or expoſe to ſale, or ſhall exchange for any other goods, matter or thing, any unſizable fiſh, that is to ſay, bret, turbet, brill, or pearl, codling, whiting, mullet, baſs, place, ſoles, or flounders, which ſhall not be of the ſeveral lengths or ſizes following, from the eyes to the utmoſt extent of the tail, (*viz.*) every bret or turbet, ſixteen inches; every brill or pearl, fourteen inches; every codlin, twelve inches; every whiting, ſix inches; every baſs and mullet, twelve inches; every ſole, eight inches; every place or dab, eight inches; and every flounder, ſeven inches; all and every perſon or perſons ſo offending ſhall, for every ſuch offence, forfeit all and every ſuch unſizable fiſh ſo brought on ſhore, ſold, offered, or expoſed to ſale, or exchanged, as afore-

ſaid, to the poor of the pariſh or place where ſuch offence ſhall be committed, and alſo ſhall, for every ſuch offence, forfeit and pay the ſum of twenty ſhillings of lawful money of *Great Britain*; one moiety thereof to the informer, and the other moiety thereof to the poor of the pariſh or place where the offence ſhall be committed, and to be levied and recovered as other penalties by this act inflicted are directed to be levied and recovered; and in default of payment of the ſaid forfeiture, or of ſufficient diſtreſs for ſatisfaction thereof, the offender ſhall, by warrant of one or more juſtice or juſtices of the peace, be ſent to the next houſe or houſes of correction, or other common gaol or priſon of any county, city, town, or place, where ſuch offence ſhall be committed, there to be ſeverely whipt, and kept to hard labour for the ſpace of ſix days, and not longer than fourteen days.

Perſons ſuffering impriſonment not liable to ſuch penalty.

8. Provided always, That where any perſon ſhall ſuffer impriſonment purſuant to this act, for any offence contrary hereunto; in default of payment of, or ſufficient diſtreſs for any penalty hereby impoſed, ſuch perſon ſhall not be liable afterwards to pay ſuch penalty.

Proſecution in one month.

9. Provided alſo, That no perſon ſhall ſuffer any puniſhment for any offence committed againſt this act, unleſs the proſecution for the ſame be commenced within one month after ſuch offence committed; any thing herein contained to the contrary notwithſtanding.

10. And whereas by an act made in the tenth and eleventh years of king *William* the

third, intituled, *An act for making* Billingſgate *a free market for ſale of fiſh*, the importation of lobſters and turbets in foreign veſſels is prohibited: and whereas the ſaid prohibition has made lobſters and turbets much dearer than they were before the paſſing the ſaid act: for remedy whereof, and for the better ſupplying this kingdom with lobſters and turbets at reaſonable rates, Be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for any perſon whatſoever, as well foreigners as *Britiſh*, freely to import, bring into, and ſell in the kingdom of *Great Britain*, in any ſhip or veſſel whatſoever, any quantity of lobſters or turbets, whether they be of foreign or *Britiſh* catching, in the ſame manner they might have done before the ſaid recited act of the tenth and eleventh years of the reign of his late majeſty king *William* was made; any thing in the ſaid act, or any other act ſince made, or uſage, to the contrary thereof in any wiſe notwithſtanding.

Lobſters and turbets may be imported as they might have been before the act 10 & 11 W. 3. c. 24.

11. And whereas in an act of parliament paſſed in the fourth and fifth years of the reign of her late majeſty queen *Anne*, intituled, *An act for the increaſe and better preſervation of ſalmon, and other fiſh in the rivers within the counties of* Southampton *and* Wilts, there is contained a clauſe, whereby it is enacted, That no perſon or perſons (not being duly qualified) ſhould there after kill, deſtroy, or wilfully hurt any ſalmon or ſalmon

The clauſe in 4 & 5 A. c. 21. relating to the catching of ſalmon, &c. repealed, ſo far as it relates to the owners of fiſheries therein mentioned.

kind, or any other fiſh; and that neither they, nor any other perſon or perſons whatſoever, ſhould or might, at any time or times after the thirtieth day of *June*, which ſhould be in the year of our lord one thouſand ſeven hundred ſix, take, kill, or deſtroy any ſalmon, ſalmon-peal, or ſalmon-kind, by hawks, racks, gins, nets, angles, or other devices whatſoever, until after the eleventh day of *November* in every year, or offer to ſale any of the ſaid fiſh ſo taken, under the pains, penalties, forfeitures and impriſonments in the ſaid act mentioned; Be it enacted by the authority aforeſaid, That the ſaid clauſe, ſo far as the ſame doth and may concern the reſpective owners and proprietors of the fiſhery and fiſhing in the reſpective rivers, in the ſaid act mentioned, and every other perſon and perſons intitled to fiſh in the ſame, and every of them, and his and their reſpective ſervants and agents, and every of them ſhall be and is hereby repealed, and be deemed and taken to be hereby repealed.

After Nov. 11, 1715, to the 1 Aug. in every year, ſuch owners, &c. may take ſalmon, &c.

12. And it is hereby enacted by the authority aforeſaid, That it ſhall and may be lawful for ſuch owners, proprietors, and perſons, and his and their ſervants and agents, and every, or any of them, at any time or times hereafter, from the eleventh day of *November*, which ſhall be in the year of our lord one thouſand ſeven hundred and fifteen, until the firſt day of *Auguſt* in every year, to take, kill, or deſtroy any ſalmon, ſalmon-

peal, or ſalmon-kind, or offer to ſale any of the ſaid fiſh ſo taken between the times aforeſaid.

No ſuch owner ſhall, after Aug. 1. 1716. till Nov. 12. following, or in any year between thoſe days, take any ſalmon, &c.

13. Provided, and it is hereby enacted by the authority aforeſaid, That no ſuch owner, proprietor, or perſon aforeſaid, or any of his or their ſervants or agents, ſhall or may, at any time or times after the firſt day of *Auguſt*, which ſhall be in the year of our lord one thouſand ſeven hundred and ſixteen, and between that day and the twelfth day of *November* then next following, or at any time or times then after, between the firſt day of *Auguſt* and the twelfth day of *November* in any year, take, kill, or deſtroy, or wilfully hurt any ſalmon, ſalmon-peal, or ſalmon-kind, by hawks, racks, gins, nets, angles, or other devices whatſoever, or offer to ſale any of the ſaid fiſh ſo taken, under the like pains, penalties, forfeitures, and impriſonments, as are mentioned and contained in the ſaid recited act.

14. And whereas the ſeveral acts of parliament heretofore made, for the preſervation of fiſhing within the rivers of this realm, have hitherto proved ineffectual in reſpect to the rivers *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Merſey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent*, and *Trent*, for want of a due encouragement to be given to ſuch perſons who could diſcover the many illegal practices and abuſes done therein, and by reaſon of the dilatorineſs and expenſiveneſs of the ſuits and proceedings directed by the

ſaid

Deſtroying the fry of ſalmon in the rivers Severn, Dee, &c.

and taking ſalmon in the ſaid rivers between the laſt of July and Nov. 12 with any other nets, &c. than are allowed by 1 El. c. 17.

ſaid acts for puniſhing ſuch abuſes: wherefore for remedy thereof, and for the better ſecuring the ſpawn, fry, and young breed of ſalmon, in the ſaid rivers, Be it further enacted by the authority aforeſaid, That if any perſon or perſons whatſoever ſhall, at any time hereafter, lay or draw any kind of nets, engines, or devices, or wilfully do or commit, or cauſe to be done or committed, any other act whatſoever in the ſaid rivers, or in any of them, whereby the ſpawn, or ſmall fry of ſalmon therein, or any kepper, or ſhedder-ſalmons, or any ſalmon not being in length eighteen inches or more, from the eye to the extent of the middle of the tail, ſhall be taken, and killed or deſtroyed, or ſhall hereafter make, erect, or ſet any bank, dam, hedge, or ſtank, net or nets, croſs the ſaid rivers, or any part thereof, whereby the ſalmon therein may be taken, or hindred from paſſing or going up the ſaid rivers to ſpawn, or ſhall at any time hereafter, between the laſt day of *July* and the twelfth day of *November* for ever, by or with any net, device, engine, ways or means whatſoever, take, kill, deſtroy, or wilfully hurt any ſalmon of any kind or ſize whatſoever in the ſaid rivers, or ſhall at any time after the ſaid twelfth day of *November* fiſh there for ſalmon, with any other net or nets than what is or are allowed of by an act of parliament made in the firſt year of the reign of queen *Elizabeth*, intituled, *An act for the preſervation of ſpawn of fiſh*, and by another act made in the thirtieth year of the reign of our late ſovereign lord king *Charles* the ſecond, intituled, *An act for the preſervation of fiſhing in the river* Severn; every perſon ſo offending in any of the ſaid caſes, who ſhall be convicted thereof before any juſtice or juſtices of peace of the county wherein the ſaid offence ſhall be committed, either upon view of ſuch juſtice or juſtices, by confeſſion of ſuch offender, or by one or more credible witneſs or witneſſes upon oath (which oath every ſuch juſtice of peace is hereby impowered to adminiſter) ſhall forfeit the ſum of five pounds for every ſuch offence, beſides the fiſh ſo taken, and the nets, engines, and devices uſed in doing or committing the ſame; one moiety of the ſaid ſum to be paid to the informer or informers, and the other moiety thereof to the poor of the pariſh where the ſaid offence ſhall be committed; to be levied by diſtreſs and ſale of the ſaid offender's goods and chattels, by warrant under the hand and ſeal of the juſtice or juſtices of peace, before whom he ſhall be convicted, as aforeſaid, rendring the overplus, if any be, over and above the charges of the diſtreſs, to the perſon ſo diſtrained; and for want of ſuch diſtreſs the offender ſhall be committed to the houſe of correction, or other county gaol or priſon, for any time not exceeding three months, nor leſs than one month, there to be kept to hard labour, and ſuffer ſuch other corporal puniſhment, as the ſaid juſtice or juſtices, upon conſideration of the circumſtances of ſuch offence, ſhall think fit; and the ſaid juſtice or juſtices of the peace, before whom the perſon ſo offending

and 30 Car. 2. cap. 9.

The offender ſhall forfeit 5 l. beſides the fiſh and nets;

to be levied diſtreſs;

and for want thereof to be committed to the houſe of correction, &c.

and the nets, &c. to be deſtroyed;

ſending ſhall be convicted, ſhall order ſuch nets, engines, and devices made uſe of in taking ſuch fiſh, to be ſeized, and immediately cut in pieces, or otherwiſe deſtroyed in his or their preſence, and ſhall alſo cauſe ſuch banks, dams, hedges, or ſtanks, made or erected croſs the ſaid river, to be demoliſhed and removed at the charges of ſuch offender; ſuch charges, if not paid down on conviction, to be levied in the ſame manner as the ſaid ſum of five pounds is appointed to be levied.

and banks, &c. removed at the charges of the offender.

Sending to London from the ſaid rivers, or buying, &c. any ſalmon leſs than 6 pounds weight each,

15. And whereas ſeveral fiſhmongers of *London*, and other cities and towns, by themſelves, or their agents, frequently buy and contract with the fiſhermen uſing the ſaid rivers of *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Merſey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent*, and *Trent*, or others imployed by them, for great quantities of ſalmon to be taken in the ſaid rivers; which gives great encouragement to the taking ſalmon there of unſizable lengths, and at unreaſonable times; Be it therefore enacted, That no ſuch ſalmon ſhall be ſent to *London* to ſuch fiſhmongers, or their agents, that ſhall weigh leſs than ſix pounds each fiſh; and every perſon, buying, ſelling, or ſending any ſuch ſalmon, of leſs weight than ſix pounds, who ſhall be convicted thereof in manner as aforeſaid, ſhall forfeit the ſum of five pounds for every ſuch offence, beſides the fiſh ſo to be bought and ſold; one moiety of the ſaid ſum and fiſh to be paid and diſtributed to the informer or informers, and the other moiety thereof to the poor of the pariſh where ſuch offence

forfeits 5l.

offence ſhall be committed; the ſaid ſum, if not paid upon conviction, to be levied by diſtreſs and ſale of the offender's goods and chattels, by warrant under the hand and ſeal of the juſtice or juſtices of peace, before whom he ſhall be convicted, as aforeſaid; rendring the overplus, if any be, over and above the charges of ſuch diſtreſs, to the owner; and in default of ſufficient diſtreſs, the offender ſhall be committed by ſuch juſtice or juſtices to the houſe of correction, or other county gaol or priſon, there to be kept to hard labour for the ſpace of three months, unleſs the ſaid forfeiture ſhall be in the mean time paid.

to be levied by diſtreſs,

and for want of diſtreſs to be committed for 3 months.

16. Provided, That where any offender in the ſaid rivers, or in any of them, ſhall be puniſhed by force of this act, he ſhall not be proſecuted, nor incur the penalty of any other law or ſtatute for the ſame offence.

Offenders puniſhed by this act ſhall not incur the penalty of any other law.

17. Provided alſo, and it is hereby enacted, That all perſons who ſhall think themſelves aggrieved by any judgment of any juſtice or juſtices of the peace, in any of the caſes aforeſaid, may appeal to the juſtices of the peace of the county, city, or place, where ſuch judgment ſhall be given, at their next general quarter ſeſſions, who are hereby impowered to hear and finally determine the ſame.

Appeal to ſeſſions, whoſe determination ſhall be final.

18. Provided, That this act, or any thing herein contained, ſhall not extend, or be conſtrued to extend, to any ancient wears or locks upon any rivers; but that it ſhall and may be lawful for the proprietors or owners thereof to repair, maintain, rebuild, remove, or take down, any of the ſaid wears or locks, as they might

The owners of ancient wears and locks may repair them, &c. notwithſtanding this act.

might have done in caſe this act had not been made.

Stat. 9 *Geo.* 1. *c.* 22. *See page* 72.

Stat. 9 *Geo.* 2. *c.* 33.

An act to render the law more effectual for preventing the importation of freſh fiſh taken by foreigners, and to explain ſo much of an act made in the thirteenth and fourteenth year of the reign of king *Charles* the ſecond, as relates to ſhips exporting fiſh to the ports of the *Mediterranean* ſea, and for the better preſervation of the fry of lobſters on the coaſts of *Scotland*.

Preamble, reciting the act 1 Geo. 1.

1. WHEREAS by an act made in the firſt year of the reign of his late majeſty king *George* the firſt, intituled, *An act for the better preventing freſh fiſh taken by foreigners being imported into this kingdom, and for the preſervation of the fry of fiſh, and for the giving leave to import lobſters and turbets in foreign bottoms, and for the better preſervation of ſalmon within ſeveral rivers in that part of this kingdom called England*, it is (amongſt other things) enacted, That from and after the twenty-ninth day of *September* one thouſand ſeven hundred and fifteen, no herring, cod, pilchards, ſalmon, or ling, freſh or ſalted, dried or bloated, nor any brill, mackerel,

kerel, whiting, haddock, ſprats, coal fiſh, bull fiſh, congers, or any ſort of flat fiſh, nor any other ſort of freſh fiſh whatſoever, ſhall be imported into, ſold, or expoſed to ſale, in that part of this kingdom called *England*, which ſhall be taken by, bought of, or received from, any foreigner or foreigners, or out of any ſtranger or ſtrangers bottom (except proteſtant ſtrangers inhabiting within this kingdom); nor ſhall any perſon or perſons give or exchange any goods, or other things, in exchange for any ſort of fiſh ſo taken, as aforeſaid: And it is thereby further enacted, That every maſter or commander, for the time being, of any ſmack, hoy, yager, boat, or other veſſel, in which any fiſh ſhall be imported, or brought to ſhore, contrary to the true intent and meaning of the ſaid act, and being thereof lawfully convicted in the manner thereby directed, ſhall forfeit, for every ſuch offence, the ſum therein mentioned, to be levied and diſpoſed of in ſuch manner, as by the ſaid act is directed, or, in default of payment of the ſaid ſum, or ſufficient diſtreſs, ſhall be committed to the common gaol, as in the ſaid act is directed; and whereas it is by the ſaid act provided, That no perſon ſhall ſuffer any puniſhment for any offence committed againſt the ſaid act, unleſs the proſecution for the ſame be commenced within one month after ſuch offence committed; and whereas the penalties inflicted by the recited clauſe of the ſaid act herein before recited are not ſufficient to deter perſons from offending againſt the ſame; and whereas by reaſon of the ſhort time limited for proſecution of offences committed againſt the ſaid act, many offenders againſt the ſame eſcape puniſhment; Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-fourth day of *June*, which ſhall be in the year of our lord one thouſand ſeven hundred and thirty-ſix, every perſon offending againſt the clauſe of the ſaid act herein before recited ſhall forfeit and pay the ſum of one hundred pounds, to be recovered by any informer in any of the courts in *Weſtminſter-hall*, and to be diſtributed and diſpoſed of in the manner following, that is to ſay, one moiety thereof to the informer, and the other moiety thereof to the poor of the pariſh where ſuch offence ſhall be committed; and the maſter or commander of every ſmack, hoy, yager, boat, ſhip, or other veſſel, in which any fiſh ſhall be imported, or brought to ſhore, contrary to the true intent and meaning of the ſaid act herein before recited, and of this preſent act, ſhall forfeit and pay the ſum of fifty pounds, to be recovered by any informer, and to be diſpoſed of in like manner as before recited.

After 24 June 1736, every perſon importing fiſh contrary to the act 1 Geo. 1. to forfeit 100l.

and the maſter of the veſſel 50l.

Provided always, That no perſon ſhall incur any penalty or forfeiture for any offence committed againſt this act, unleſs the proſecution for the ſame be commenced within twelve months after ſuch offence committed.

Proſecution to be commenced in 12 months after the fact.

And

A clauſe in the act 13 & 14 Car. 2. for preventing frauds in the cuſtoms, explained.

And whereas by an act of parliament made in the thirteenth and fourteenth year of the reign of king *Charles* the ſecond, intituled, *An act for preventing frauds, and regulating abuſes in his majeſty's cuſtoms*, it is, for the better increaſe of good and ſerviceable ſhipping, and ſecuring the publick trade and commerce, enacted, That all and every merchant, or other perſon, that ſhould after the twenty-ninth day of *September* one thouſand ſix hundred ſixty-two, export any goods or merchandizes from any port of this kingdom, capable of a ſhip or veſſel of two hundred tuns upon an ordinary full ſea, to any port or place of the *Mediterranean* ſea beyond the port of *Malaga*, or import any goods or merchandize from the ports or places aforeſaid to any port of this kingdom in any ſhip or veſſel that ſhould not have two decks, and ſhould carry leſs than ſixteen pieces of ordnance mounted, together with two men for each gun, and other ammunition proportionable, ſhould pay a duty of one *per centum* for all and every the wares ſo exported or imported, over and above the rates and duties of ſubſidy of tunnage and poundage otherwiſe due and payable for the ſame; and in the ſame act it is provided, That it ſhould and might be lawful to export, from any of his ſaid majeſty's dominions, fiſh into any of the ports of the *Mediterranean* ſea aforeſaid, in any *Engliſh* ſhip or veſſel whatſoever, provided one moiety of her full loading ſhould be fiſh only, and in ſuch caſe to import any wares or merchandize in the ſame ſhip, for that voyage, without paying any other rates or duties for the ſame than were then before accuſtomed: and whereas ſome doubts and diſputes have ariſen whether the exemption granted by the ſaid act in favour of any *Engliſh* ſhip or veſſel, whereof one moiety of her full loading ſhould be fiſh only, ſhould be conſtrued to extend to the benefit and advantage of the owner or owners of ſuch ſhip or veſſel, in caſe one moiety of her full loading ſhould conſiſt of foreign fiſh: to prevent therefore the ſaid doubts and diſputes for the future, and for the greater encouragement of the *Britiſh* fiſheries, Be it further enacted by the authority aforeſaid, That no *Britiſh* ſhip or veſſel, trading to any port or place of the *Mediterranean* ſea, beyond the port of *Malaga*, in manner aforeſaid, ſhall be intitled to the benefit and advantage of the exemption granted to ſuch ſhip or veſſel in the ſaid act, for or by reaſon that one moiety of the full loading of ſuch ſhip or veſſel ſhall or may conſiſt of fiſh, unleſs ſuch moiety of the full loading of ſuch ſhip or veſſel do conſiſt of fiſh taken and cured by his majeſty's ſubjects only.

And whereas the deſtroying the fry or ſpawn of any fiſh is highly prejudicial, eſpecially ſuch fiſh as do not wander, but keep about the coaſts; and whereas the principal time for the ſpawning of lobſters is from the beginning of *June* to the firſt of *September*, in which three months the lobſters crawl cloſe to the ſhore to leave their ſpawn in the chinks of the rocks, and as much under the influence of the ſun as poſſible; Be it therefore enacted by the authority aforeſaid, That from and after the firſt day of *June* one thouſand ſeven hundred and thirty-ſix, no fiſherman or other perſon or perſons whatever ſhall, with trunks, hoop nets, or any other way, take, kill, or deſtroy, any lobſters on the ſea coaſt of that part of *Great Britain* called *Scotland*, from the firſt day of *June* to the firſt day of *September* yearly, under the penalties of five pounds *ſterling* for each offence, to be recovered by any perſon who ſhall inform and ſue for the ſame, upon a ſummary complaint before any two or more of his majeſty's juſtices of the peace of the ſhire on the coaſt where any ſuch offence ſhall happen to be committed.

5l. penalty on taking or killing lobſters on the coaſt of Scotland between 1 June and 1 September yearly.

Stat. 22 *Geo.* 2. *c.* 49. §. 21. Fiſh under ſuch dimenſions as are prohibited by ſtat. 1 *Geo.* 1. *c.* 18. may be expoſed to ſale, or exchanged for any other goods, provided ſuch fiſh are taken with a hook, and ſo not fit or capable of being preſerved alive.

Stat. 33 *Geo.* 2. *c.* 26.

An act to regulate the ſale of fiſh at the firſt hand in the fiſh markets in *London* and *Weſtminſter*; and to prevent ſaleſmen of fiſh buying fiſh to ſell again on their own account; and to allow bret and turbet, brill and pearl, although under the reſpective dimenſions mentioned in a former act, to be imported and ſold; and to puniſh perſons who ſhall take or ſell any ſpawn, brood, or fry of fiſh, unſizeable fiſh, or fiſh out of ſeaſon, or ſmelts under the ſize of five inches; and for other purpoſes.

Report, for the future, to be made within 3 days after the arrival of every veſſel with fiſh at the Nore, to the clerk of the coaſt office, London,

Sect. 2. FROM and after the twenty-fourth day of *June* 1760, the maſter, owner, chief officer, or mariner, who ſhall have the care or conduct of any fiſhing ſhip, ſloop, ſmack, or other veſſel or veſſels made uſe of for the catching or importing of fiſh, ſhall, within three days after the arrival of any ſuch fiſhing ſhip, ſloop, ſmack, or other veſſel or veſſels at the *Nore*, with any ſuch fiſh, truly report the time of ſuch arrival of every ſuch fiſhing ſhip, ſloop, ſmack, or other veſſel, to the perſon, who for the time being ſhall act as deputed clerk in the coaſt office, under the collector outward in the port of *London*, at the *Cuſtom-houſe*

houſe in *London*, who is hereby directed and required to take notice thereof, and to enter the ſame in a book to be by him provided and kept for that purpoſe; and alſo to give a certificate thereof, if required, to ſuch maſter, chief officer, or mariner, who ſhall make any ſuch entry as aforeſaid; and that there ſhall be paid to ſuch ſaid perſon, who for the time being ſhall act as deputed clerk at the ſaid coaſt office under the collector outward in the ſaid port of *London*, for receiving and entering every ſuch report, and giving a certificate thereof, if required, the ſum of two ſhillings, which ſhall be applied in manner following; that is to ſay; The ſum of ſix pence, part thereof, ſhall be kept and retained by and for the uſe of ſuch perſon, who for the time being ſhall act as ſuch deputed clerk at the ſaid coaſt office, under the ſaid collector outward, for receiving and entering every ſuch report, and giving a certificate thereof, if required; and the ſum of one ſhilling and ſix pence, the remainder thereof, ſhall from time to time be paid by ſuch ſaid deputed clerk to the truſtees of the ſaid fiſh market in *Weſtminſter* for the time being, or ſuch perſon or perſons as the ſaid truſtees, or any five or more of them, ſhall, by writing for that purpoſe under their hands, direct or appoint; and the receipt of ſuch perſon or perſons as the ſaid truſtees, or any five of them, ſhall, from time to time, direct or appoint to receive the remainder of every ſuch two ſhillings, ſhall be and is hereby declared to be at all times a full diſcharge to ſuch ſaid de-

who is to make an entry, and grant a certificate thereof;

for which 2s. is to be paid;

6d. thereof to go to the clerk; and

1s. 6d. to the truſtees of the fiſh market at Weſtminſter;

puted clerk at the ſaid coaſt office, under the collector outward, for the ſame: and the money which ſhall be received by any ſuch perſon or perſons ſhall, from time to time, be applied by the ſaid truſtees, or any five of them, to the like uſes and purpoſes as the money, to be paid them by the ſearcher or ſearchers at *Graveſend*, was directed to be applied.

how to be applied.

The maſter, &c. neglecting to make ſuch entry, forfeits, on conviction, 50l.

3. And be it further enacted by the authority aforeſaid, That if the maſter, chief officer, or mariner, who ſhall have the care or conduct of any ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels, ſhall not, within the ſpace of three days next after the arrival of ſuch fiſhing ſhip, ſloop, ſmack, or other veſſel or veſſels, at the *Nore*, as aforeſaid, enter, or cauſe to be entered, every ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels, with ſuch ſaid deputed clerk as aforeſaid at the ſaid coaſt office, under the ſaid collector outward; then, in every ſuch caſe, on information being given thereof on oath before any juſtice of the counties of *Kent*, *Surry*, *Eſſex*, or *Middleſex*, or of the cities of *London* or *Weſtminſter*, or before the mayor, recorder, or aldermen acting, for the time being, as magiſtrates within the towns of *Queenborough* and *Graveſend*, or before the mayor, recorder, or aldermen, of any other corporate town between the ſaid towns of *Queenborough* and *Graveſend* and the ſaid city of *Weſtminſter*; and on ſuch maſter or other perſon as aforeſaid, who ſhall have the care

or conduct of any ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels, as aforeſaid, being convicted of having neglected or omitted to make ſuch entry as aforeſaid, either on his own confeſſion, or by the oath of one or more credible witneſs, before any ſuch juſtice or juſtices, the owner or owners, of every ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels as aforeſaid, ſhall, for every ſuch offence, forfeit and pay the ſum of fifty pounds.

and if he refuſes or neglects to give in at the ſame time, a particular and true account of the ſeveral ſorts of fiſh brought alive to the Nore, in his veſſel,

4. And be it alſo enacted by the authority aforeſaid, That every maſter, owner, chief officer, or mariner, who ſhall have the care or conduct of any ſuch fiſhing ſhip, ſloop, ſmack, or other veſſel, as aforeſaid, ſhall alſo, at the time of his making, or cauſing to be made, at the ſaid coaſt office, the report hereby required to be made by him, give to, and leave with, the ſaid perſon who for the time being ſhall act as the deputed clerk at the ſaid coaſt office, under the ſaid collector outward, a true and particular account, according to the beſt of the judgment and belief of every ſuch maſter, owner, chief officer, or mariner, as aforeſaid, and either in writing or printed, of all freſh ſalmon, ſalmon trouts, turbots, and large freſh cod, and half freſh cod fiſh, haddock, ſcate fiſh, freſh ling, lobſters, ſoles, and whitings, which ſhall be brought alive to the *Nore* in every ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel, as aforeſaid; upon pain that the owner or owners of every ſuch fiſhing ſloop, ſmack, or other fiſhing veſſel or veſſels, whoſe maſter, owner,

he forfeits 20 l.

officer, or mariner, as aforeſaid, ſhall refuſe, neglect, or omit, to give or leave ſuch account, or who ſhall give or leave any falſe or untrue account thereof, ſhall, on any ſuch maſter, owner, chief officer, or mariner, as aforeſaid, being convicted of any ſuch offence, either on his own confeſſion, or by the oath of one or more credible witneſs or witneſſes, before any ſuch juſtice or juſtices as aforeſaid, for every ſuch offence forfeit and pay the ſum of twenty pounds; or if any ſuch maſter, owner, chief officer, or mariner, who ſhall have the care or conduct ~~of any~~ ſuch fiſhing ſhip, ſloop, ſmack, or other veſſel, or any other perſon on board ſuch fiſhing ſhip, ſloop, ſmack, or other veſſel, after her arrival at the *Nore*, ſhall wilfully deſtroy, or throw or caſt away, or cauſe to be wilfully deſtroyed, or thrown or caſt away, any fiſh which the ſaid fiſhing ſhip, ſloop, ſmack, or fiſhing veſſel, ſhall have brought from the ſea that is not unwholeſome, periſhed, or unmarketable, ſuch maſter, chief owner, officer, or mariner, ſhall be committed to the houſe of correction, there to remain without bail, or mainprize, and to be kept to hard labour, for any time not exceeding two months, nor leſs than one month.

and if after ſuch arrival, he ſhall wilfully deſtroy or throw away any of the ſaid fiſh, not being unwholeſome or unmarketable, &c.

he is liable to be committed to the houſe of correction, and kept to hard labour for any time not exceeding 2 months, nor leſs than one.

5. And be it further enacted by the authority aforeſaid, That all the above mentioned forfeitures ſhall be levied by warrant under the hand and ſeal, or hands and ſeals, of any juſtice or juſtices of the peace as aforeſaid, by diſtreſs and ſale of the goods and chattels of the owner or owners of the fiſhing ſhip, ſloop,

Method of recovery of the forfeitures aforeſaid.

ſloop, ſmack, or other veſſel, whoſe maſter, chief officer, or mariner, as aforeſaid, ſhall be convicted of any ſuch offence as aforeſaid, by any ſuch juſtice or juſtices as aforeſaid, or by diſtreſs and ſale of the fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels, whoſe maſter, chief officer, or mariner, as aforeſaid, ſhall have been convicted of any ſuch offence as aforeſaid, or of any nets, tackle, or furniture, as ſhall belong to any ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels, together with the coſts of every ſuch diſtreſs and ſale; rendering the overplus, if any, after the money forfeited, and the coſts of every ſuch diſtreſs and ſale, ſhall be paid, to the perſon or perſons intitled thereto.

The clerk of the coaſt office is to receive and make entry of all ſuch reports of arrivals,

6. And be it likewiſe enacted by the authority aforeſaid, That the perſon for the time being who ſhall act as deputed clerk at the ſaid coaſt office, under the ſaid collector outward, ſhall, from time to time, receive at the ſaid coaſt office every report which ſhall be there made, or offered to be made, of the time of the arrival of every ſuch fiſhing ſhip, ſloop, ſmack, or other veſſel or veſſels as aforeſaid, at the *Nore*, and enter the ſame in a book to be by him provided and kept for that purpoſe; and ſhall alſo, from time to time, receive at the ſaid coaſt office every account which ſhall, from time to time, be brought, or offered to be made there, of the freſh ſalmon, ſalmon trout, turbot, and large freſh cod, and half freſh cod fiſh, haddock, ſcate fiſh, freſh ling, lobſters, ſoles, and whitings, as aforeſaid, which ſhall be brought in any ſuch

and accounts given in of fiſh on board ſuch veſſels;

ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel, as aforeſaid, to the *Nore*; and ſhall, from time to time, with all convenient ſpeed after any ſuch account of fiſh as aforeſaid ſhall be brought to the ſaid coaſt office, cauſe the ſame, or the purport thereof, to be entered in ſome book to be provided by the ſaid perſon, who for the time being, ſhall ſo act as deputed clerk at the ſaid coaſt office, under the ſaid collector outward, for that purpoſe; and which book and books ſhall, from time to time, be kept at the ſaid coaſt office, and may be, at all times in office hours there, examined into, and inſpected by, any perſon or perſons.

and the books in which ſuch entries are to be made, are to be kept at the coaſt office, and may be examined by any perſon;

7. And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June* the perſon, who for the time being ſhall act as ſuch deputed clerk at the ſaid coaſt office as aforeſaid, under the ſaid collector outward, ſhall, on *Monday*, *Wedneſday* and *Friday* in every week, return, or cauſe to be returned unto the mayor of the city of *London* for the time being, in *London*; and to ſuch perſon as the ſaid truſtees of the ſaid fiſh market at *Weſtminſter*, or any five of them, ſhall appoint, in the city of *Weſtminſter*; and likewiſe to the inſpector as aforeſaid, at ſuch place as the ſaid truſtees, or any five of them, ſhall, by any writing ſigned by them, appoint the ſame to be ſent to ſuch inſpector, and give notice thereof, to the perſon who for the time being ſhall act as deputed clerk at the ſaid coaſt office as aforeſaid; a true account in writing, or printed, and

and is to make returns weekly on Mondays, Wedneſdays, and Fridays, to the mayor of London, and to the perſon who ſhall be appointed by the truſtees for the fiſh market at Weſtminſter, and alſo to the inſpector, and in a fair and legible character, of the time when every reſpective fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel as aforeſaid, ſhall have been entered at the ſaid coaſt office as having arrived at the *Nore*; and alſo of the freſh ſalmon, ſalmon trout, turbot, large freſh cod, and half freſh cod fiſh, haddock, ſcate fiſh, freſh ling, lobſters, ſoles, and whitings, as aforeſaid, which ſhall have been entered at the ſaid coaſt office as brought to the *Nore* in ſuch reſpective fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel as aforeſaid; upon pain that the perſon, who for the time being ſhall act as ſuch deputed clerk at the ſaid coaſt office as aforeſaid, under the ſaid collector outward, ſhall in any wiſe offend in the premiſſes, and be thereof convicted, either on his own confeſſion, or by the oath of one or more witneſs or witneſſes, before any juſtice or juſtices as aforeſaid, ſhall, for every ſuch offence, neglect, or omiſſion, forfeit and pay the ſum of five pounds.

of all ſuch entries and reports as aforeſaid,

on forfeiture of 5 l. for every ſuch omiſſion or neglect.

8. And be it further enacted by the authority aforeſaid, That no live ſalmon, ſalmon trout, turbot, large freſh cod, half freſh cod, haddock, ſcate, freſh ling, ſoles, or whitings, ſhall at any time after the arrival thereof at the *Nore* as aforeſaid, be put into any well boat or ſtore boat from or out of any ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels as aforeſaid, in which the ſame ſhall have been brought to the *Nore*; upon pain that every perſon who ſhall offend in the premiſſes ſhall, for every ſuch offence, forfeit and pay the ſum of twenty pounds; and that no ſuch

No fiſh, after its arrival at the Nore, is to be removed out of the veſſel in which it was brought, into the ſtore or well boat of any other veſſel, on penalty of 20 l.

nor may any fiſh be delivered out of ſuch fiſhing veſſels, unleſs by retail, into other veſſels, but ſuch as ſhall be employed to carry the fiſh directly to market; and if ſuch market veſſels ſhall loiter on their way, or be above a tide after taking in their loading, in arriving at the market, and delivering her fiſh there, &c. the offender is to be committed to hard labour for any time not exceeding 2 months, nor leſs than 1.

ſuch fiſh ſhall be unloaded or delivered out of any fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels, unleſs by retail, into any other veſſel or boat after ſuch her arrival at the *Nore*, but into ſuch veſſel or veſſels, boat or boats, as ſhall be employed to carry the fiſh directly to the market of *Billingſgate* or *Weſtminſter*; and that no ſuch veſſel or boat, after ſuch fiſh put therein, ſhall afterwards loiter or keep from going on directly, and as ſoon as may be, to and for the market to which ſuch veſſel or boat is appointed or bound; and in caſe ſuch veſſel or boat, into which ſuch fiſh ſhall be unloaded and delivered out for the market, ſhall remain above one tide with her fiſh, after taking in the ſame, in her way between the place of ſuch taking in and the market at *Billingſgate* or *Weſtminſter* as aforeſaid; or ſhall remain without delivering her fiſh there at or before the next market, accidents of winds and weather excepted; every ſuch perſon acting contrary to the ſaid prohibitions, ſhall be committed to the houſe of correction, there to remain without bail or mainprize, and to be kept to hard labour for any time not exceeding two months, nor leſs than one month.

The inſpector is to examine whether the entries are duly made,

9. And be it further enacted by the authority aforeſaid, That the inſpector already appointed, and who ſhall hereafter be appointed under the ſaid recited act, ſhall from time to time employ himſelf as the ſaid truſtees ſhall from time to time direct and appoint, in inſpecting and examining whether the entries made at the ſaid coaſt office as hereby directed

(and whereof copies as aforeſaid ſhall be tranſmitted to him) were made from time to time, within the time the ſame ought to have been, and according to the account which ſhall from time to time be tranſmitted from the ſaid coaſt office to ſuch inſpector, ſo as that ſuch inſpector for the time being may the better diſcover and prevent the frauds deſigned to be remedied by the ſaid recited act, and this preſent act; and ſee that no fiſh ſhall be put in any ſtore or well boats contrary to the intent of this act; and if any ſuch inſpector ſhall be negligent in the performance of his duty, or ſhall wilfully miſbehave himſelf in the execution of his duty in the premiſſes, he ſhall, on being convicted of any ſuch neglect or wilful miſbehaviour, either on his own confeſſion, or the oath of one or more credible witneſs or witneſſes as aforeſaid, before any juſtice or juſtices as aforeſaid, he ſhall forfeit and pay for every ſuch neglect or wilful miſbehaviour the ſum of twenty pounds.

and ſee that no fiſh be put in any ſtore or well boats contrary to the intent of the act; on forfeiture, for any neglect, or wilful miſbehaviour, of 20l.

10. And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June* no perſon, who ſhall ſell, or be concerned in the ſale of any freſh fiſh by commiſſion, ſhall directly or indirectly buy or be concerned in the buying of any freſh fiſh to ſell again for his or her own ſeparate account, or for the joint account of him or herſelf and any other perſon or perſons whatſoever: and if any perſon ſhall offend in the premiſſes, and be thereof convicted either on his or her own confeſſion, or by the oath of one or more credible witneſs or witneſſes,

No ſaleſman may buy any freſh fiſh to be ſold again, in which he is to be any ways intereſted, witneſſes, by any ſuch juſtice or juſtices as aforeſaid, every ſuch offender ſhall forfeit and pay for every ſuch offence the ſum of fifty pounds.

on forfeiture of 50 l.

Clauſe in act 1 Geo. 1.

11. And whereas by an act of parliament paſſed in the firſt year of the reign of his late majeſty king *George* the firſt, intituled, *An act for the better preventing freſh fiſh taken by foreigners imported into this kingdom; and for the preſervation of the fry of fiſh; and for the giving leave to import lobſters and turbots in foreign bottoms; and for the better preſervation of ſalmon within the ſeveral rivers of that part of this kingdom called* England; it is, amongſt other things, enacted, That after the time in the ſaid act mentioned, no perſon ſhould bring to ſhore in that part of *Great Britain* called *England*, or ſell, offer, or expoſe to ſale, or exchange for any goods, matter, or thing, any bret or turbot which ſhould not be of the length or ſize of ſixteen inches from the eyes to the utmoſt extent of the tail; or any brill or pearl, which ſhould not be fourteen inches from the eyes to the utmoſt extent of the tail, under the penalties therein mentioned: and whereas bret or turbot, brill or pearl, are often taken in the ſea with an hook, under the ſeveral dimenſions in the ſaid laſt in part recited act mentioned, and if thrown again into the ſea, it is uncertain whether ſuch thereof as have ſwallowed the hook, will afterwards live, or not; Be it therefore further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June*, bret or turbot, brill or pearl, although under the

Bret, turbot, brill or pearl, may be brought the reſpective dimenſions mentioned in the ſaid clauſe of the ſaid laſt recited act, may be expoſed to ſale in *England*; any thing contained in the ſaid laſt recited act to the contrary notwithſtanding; ſo as the ſame be not by any perſon or perſons, at any time after the ſaid twenty-fourth day of *June*, ſold by retail, at a price or rate exceeding ſix pence a pound for every pound any ſuch bret or turbot under the ſaid dimenſion of ſixteen inches from the eyes thereof to the utmoſt extent of the tail thereof, or any ſuch brill or pearl under the dimenſion of fourteen inches from the eyes thereof to the utmoſt extent of the tail thereof, ſhall weigh, and after that proportion for any leſſer weight than a pound: and if any perſon ſhall aſk, demand, or take, for any ſuch bret, turbot, brill or pearl, under the reſpective dimenſions as aforeſaid, any higher or greater price than at and after the rate of ſix pence the pound, and ſo in proportion for any leſſer weight thereof than a pound, which any ſuch bret or turbot, brill or pearl, ſhall weigh; or ſhall refuſe or neglect to weigh and meaſure any ſuch bret or turbot, brill or pearl, which ſhall be expoſed to or for ſale, when required; every ſuch bret or turbot, brill or pearl, ſhall be forfeited: and it ſhall be lawful for any perſon to ſeize any ſuch bret or turbot, brill or pearl, and deliver the ſame into the hands of a conſtable, and to charge ſuch conſtable with the party who aſked, demanded, or took, any greater or higher price than as aforeſaid, for the ſame; and every ſuch conſtable is hereby required to

to market, tho' under the dimenſions of 16 inches required by the recited clauſe,

ſo as the ſame be not ſold by retail above 6 d. per lb.

If any greater price ſhall be demanded or taken,

or ſuch fiſh ſhall not be weighed or meaſured, if required,

the ſame may be ſeized, and be carried, together with the party, before a juſtice, carry the party ſo charged, and alſo the bret or turbot, brill or pearl, which ſhall be ſo ſeized and delivered to him, with all convenient ſpeed before ſome juſtice or juſtices of the peace, within whoſe juriſdiction any higher price than as aforeſaid was aſked, demanded, or taken, for any ſuch bret or turbot, brill or pearl, which ſhall have been ſo ſeized: and if the perſon who ſhall be charged with any ſuch offence, ſhall be convicted thereof, either on his or her confeſſion, or by the oath of one or more credible witneſs or witneſſes, by any ſuch juſtice or juſtices as aforeſaid, every ſuch offender ſhall forfeit and pay the ſum of twenty ſhillings for every ſuch offence, and the bret or turbot, brill or pearl, which ſhall have been ſo ſeized as aforeſaid, ſhall, by order of ſuch juſtice or juſtices, be given to the perſon or perſons who ſhall proſecute to conviction any ſuch offender or offenders; and the money paid for any ſuch bret or turbot, brill or pearl, ſhall be returned to the party or parties who paid the ſame.

and the offender, upon conviction, is to forfeit 20 s.

and the money paid for the ſame to be returned.

12. And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June* no perſon ſhall ſell, or expoſe to or for ſale, at the firſt hand, at any fiſh market within the limits of the weekly bills of mortality, or within one hundred and fifty yards of any ſuch fiſh market, and during the market hours of any ſuch fiſh market, any freſh ſalmon, ſalmon trout, turbot, large freſh cod fiſh, or half freſh cod fiſh, haddock, ſcate fiſh, freſh ling, lobſters, ſoles,

No freſh fiſh may be ſold at the firſt hand, at the market, or within a certain diſtance thereof, during market hours, ſoles, or whitings, before he or ſhe ſhall have firſt placed up, or cauſed to be placed up, in ſome conſpicuous manner, on or over the form, bench, ſtall, or place, at which he or ſhe ſhall offer or expoſe to or for ſale, any ſuch freſh ſalmon, ſalmon trout, turbot, large freſh cod, or half freſh cod, haddock, ſcate fiſh, freſh ling, lobſters, ſoles, or whitings, a true account, and in a large, fair, and legible character, and either wrote or printed, of all freſh ſalmon, ſalmon trout, turbot, and large freſh cod, and half freſh cod fiſh, haddock, ſcate fiſh, freſh ling, lobſters, ſoles, or whitings, which any ſuch perſon ſhall then have, or have been intruſted with, to ſell; diſtinguiſhing in every ſuch account, the ſeveral ſorts of all ſuch freſh ſalmon, ſalmon trout, large freſh cod, and half freſh cod fiſh, haddock, ſcate fiſh, freſh ling, lobſters, ſoles, or whitings, as aforeſaid, and the quantity of every ſort thereof reſpectively, which any ſuch perſon ſhall then have, or is then intruſted with, to ſell: and if at any time of the morning or day, in which any ſuch account ſhall have been ſo placed up, and before the fiſh market of that day ſhall be ended or over, any other freſh ſalmon, or ſalmon trout, large freſh cod fiſh, or half freſh cod fiſh, haddock, ſcate fiſh, freſh ling, lobſters, ſoles, or whitings, ſhall be brought to, or be intruſted with, any ſuch ſaleſman or factor, as aforeſaid, to ſell, every ſuch ſaleſman or factor, before he or ſhe ſhall ſell, or offer or expoſe to or for ſale, any of ſuch other freſh ſalmon, ſalmon trout, turbot, large freſh cod, or half freſh

before a particular account of the quantity of the ſeveral ſorts of fiſh be placed over the ſtall or place where the ſame are to be ſold;

and all ſuch other fiſh as ſhall be brought for ſale, before the market is over, are to be added to the account, cod fiſh, haddock, ſcate fiſh, freſh ling, lobſters, ſoles, or whitings, as aforeſaid, ſhall add a true account or particular thereof to the account ſo before put up: and ſhall take care that every ſuch account and accounts which ſhall be ſo put up, ſhall continue up where the ſame ſhall have been firſt placed, until all the fiſh ſpecified therein ſhall be ſold, or the fiſh market of the day on which the ſame ſhall be ſo placed up ſhall be over or ended, without being defaced or obliterated; upon pain that every one who ſhall in any wiſe offend in the premiſſes, or who ſhall wilfully take down, deface, or obliterate any account which ſhall be placed up as aforeſaid, during the time the ſame ought to continue up, and ſhall be convicted of any ſuch offence (other than and except the taking down, defacing, or obliterating ſuch account, which ſhall be placed up as aforeſaid) on his, her, or their own confeſſion, or by the oath of one or more witneſs or witneſſes, before any ſuch juſtice or juſtices as aforeſaid ſhall, for every ſuch offence, forfeit and pay the ſum of ten pounds; and that every perſon who ſhall be convicted in manner as aforeſaid, of taking down, wilfully defacing, or obliterating, or cauſing to be taken down, defaced, or obliterated, any ſuch account placed up as aforeſaid, at any time whilſt the ſame ought to have continued up, ſhall, for every ſuch offence, forfeit and pay the ſum of forty ſhillings.

and the account kept up undefaced till the ſale or market is over,

on forfeiture of 10l. for offending in any of the premiſſes, except for pulling down, or defacing, any ſuch account, for which the forfeiture is 40 s.

13. And for the better preſervation of the ſpawn, brood, and fry of fiſh, and for pre-

venting the ſale of ſmall and unſizeable fiſh, and fiſh out of ſeaſon, Be it further enacted by the authority aforeſaid, That no perſon ſhall, at any time after the ſaid twenty-fourth day of *June*, take, kill or deſtroy, or knowingly have in his or her poſſeſſion, either on the water or on ſhore, or ſhall bring to ſhore, or cry, carry about, ſell, offer or expoſe to or for ſale, or ſhall exchange for any goods, matter, or thing, any ſpawn, fry, or brood of fiſh, or any unſizeable fiſh, or any fiſh out of ſeaſon, or any ſmelt which ſhall not be full five inches in length, from the noſe to the utmoſt extent of the tail thereof; and if any one ſhall offend in the premiſſes, it ſhall be lawful for any other perſon or perſons, under the authority of this act, to take and ſeize all or any ſuch ſpawn, fry, or brood of fiſh, or any unſizeable fiſh, or any fiſh out of ſeaſon, or any ſmelt of leſs ſize than five inches from the noſe to the utmoſt extent of the tail thereof, where-ever the ſame ſhall be found, together with all baſkets and package in which the ſame ſhall be ſo found or taken, and alſo to charge a conſtable, or other peace officer, with every ſuch offender and offenders in the premiſſes; and after every ſuch ſeizure ſhall be made, the ſpawn, fry, or brood, or other fiſh, as aforeſaid, together with the baſkets and package in which the ſame ſhall be ſo ſeized, ſhall be delivered into the hands of ſome conſtable, or other peace officer; and every ſuch conſtable, or other peace officer, is hereby authorized and required to take every ſuch offender and offenders, with

All ſpawn, fry, or brood of fiſh, unſizeable fiſh, fiſh out of ſeaſon, or ſmelts under 5 inches long, which ſhall be found in any perſon's poſſeſſion, may be ſeized, together with the offender, and be delivered over to a conſtable, whom he ſhall be ſo charged for any ſuch ſaid offence, into his cuſtody, and alſo the ſpawn, fry, or brood of fiſh, and all unſizeable fiſh, and fiſh out of ſeaſon, and all unſizeable ſmelts, and all baſkets and package in which the ſame ſhall be ſo ſeized, and which ſhall be delivered to ſuch conſtable, or other peace officer, as aforeſaid, and to carry every ſuch offender and offenders, and all ſuch ſpawn, fry, or brood of fiſh, and all unſizeable fiſh, and fiſh out of ſeaſon, and all unſizeable ſmelts, together with the baſkets and package, as aforeſaid, which ſhall have been delivered to any ſuch conſtable, or other peace officer, with all convenient ſpeed, before ſome juſtice or juſtices, as aforeſaid, for ſuch offender and offenders to be dealt with according to law; and on the conviction of any ſuch offender or offenders, for any ſuch ſaid offence, before any ſuch juſtice or juſtices, as aforeſaid, every ſuch offender and offenders ſhall forfeit all and every ſuch ſpawn, fry, or brood of fiſh, unſizeable fiſh, and fiſh out of ſeaſon, and every ſmelt and ſmelts of leſs ſize than five inches from the noſe to the utmoſt extent of the tail thereof, which ſhall be ſo ſeized, together with all baſkets or package in which the ſame ſhall be ſo ſeized; and all ſuch ſpawn, fry, or brood of fiſh, unſizeable fiſh, and fiſh out of ſeaſon, and unſizeable ſmelts, together with ſuch baſkets and package in which the ſame ſhall have been ſo ſeized, as aforeſaid, ſhall, by order of the juſtice or juſtices before whom the ſame ſhall be ſo brought, be delivered to the perſon

to be taken before a juſtice,

to be dealt with according to law;

and on conviction, the offender forfeits all ſuch ſpawn and fiſh, &c. to the proſecutor.

ſon or perſons who ſhall have ſo ſeized the ſame, and ſhall proſecute to conviction any ſuch offender or offenders; and every offender and offenders in the premiſſes who ſhall be convicted, as aforeſaid, of any ſuch offence, ſhall beſides forfeit and pay, for every ſuch offence, the ſum of twenty ſhillings.

and is to pay moreover 20 s.

14. And be it further enacted by the authority aforeſaid, That the under water bailiff of the city of *London* for the time being, and alſo the officers of the city of *London* for the time being, commonly called *The yeomen of the water-ſide*, ſhall, from and after the ſaid twenty-fourth day of *June*, from time to time, take care to ſee that the proviſions hereby made concerning the ſale of freſh fiſh in the fiſh market at *Billingſgate*, and for puniſhing perſons who ſhall have there in his or their poſſeſſion, any ſpawn, brood, or fry, of any kind of fiſh, or any unſizeable fiſh, or any fiſh out of ſeaſon, or any ſmelt of leſs ſize than five inches from the noſe to the utmoſt extent of the tail thereof, ſhall be enforced and carried into execution; and ſhall alſo, from time to time, take care that the proviſions made by a ſtatute paſſed in the ninth year of the reign of her late majeſty queen *Anne* (intituled, *An act for the better preſervation and improvement of the fiſhery within the river of* Thames; *and for regulating and governing the company of fiſhermen of the ſaid river)* againſt regrating of fiſh in and at the market of *Billingſgate*, or within one hundred and fifty yards of *Billingſgate* dock, be ſtrictly obſerved; and to lay information, from time

The under water bailiff, and yeomen of the waterſide, to ſee that the proviſions of this act concerning the ſale of freſh fiſh at Billingſgate; and puniſhment of perſons having ſpawn or unſizeable fiſh, &c. in their poſſeſſion, be carried into execution; and that the act 9 Annæ againſt regrating of fiſh in the ſaid market, be obſerved;

to time, before ſome juſtice or juſtices of the peace of the ſaid city of *London*, againſt every perſon and perſons whom the ſaid under bailiff, or any yeoman of the waterſide for the time being, ſhall at any time find or diſcover to offend againſt the ſtatute, in order that every ſuch offender may be puniſhed as by ſaid laſt-mentioned ſtatute is directed: and that from and after the ſaid twenty-fourth day of *June* the perſon or perſons for the time being, who is or ſhall be appointed by the truſtees aforeſaid to ſuperviſe the fiſh market of the city of *Weſtminſter*, ſhall take care to ſee, from time to time, that the proviſions hereby made concerning the ſale of freſh fiſh in the fiſh market at *Weſtminſter*, and for puniſhing perſons who ſhall have there in his, her, or their poſſeſſion, any ſpawn, brood, or fry, of any kind of fiſh, or any unſizeable fiſh, or any fiſh out of ſeaſon, or any ſmelts of leſs ſize than five inches from the noſe to the utmoſt extent of the tail thereof, ſhall be enforced and carried into execution: and if the under water bailiff, or any yeoman of the waterſide of the ſaid city of *London*, for the time being, or the perſon or perſons appointed, or to be appointed, as aforeſaid, to ſuperviſe the ſaid fiſh market of the city of *Weſtminſter*, or any of them, ſhall at any time be negligent, or offend in the premiſſes, and ſhall be convicted of any ſuch neglect or offence, either on his own confeſſion, or by the oath of one or more credible witneſs or witneſſes, before any juſtice or juſtices of the peace within whoſe juriſdiction any ſuch neglect

and lay information before a proper magiſtrate of all offenders againſt the ſaid ſtatute;

and the ſuperviſor of the fiſh market at Weſtminſter is to take care, in like manner, that the aforeſaid proviſions be duly executed and obſerved there;

on penalty of their reſpectively forfeiting, for any nelect or offence ſhall be committed, every ſuch offender ſhall, for every ſuch offence, forfeit and pay the ſum of five pounds.

glect or omiſſion of their duty, 5 l.

Recovery and application of the forfeitures.

15. And be it alſo enacted by the authority aforeſaid, That any juſtice or juſtices of the peace, as aforeſaid, within his or their reſpective juriſdiction, ſhall, on application to him or them for that purpoſe made, grant his or their warrant under his hand, and ſeal, or their hands and ſeals, to levy any money which ſhall be forfeited by virtue of this act, on the conviction of any offender or offenders, by diſtreſs and ſale of the goods and chattels of the perſon or perſons who ſhall be convicted of any offence againſt this act, together with the coſts of every ſuch diſtreſs and ſale (except in the caſes herein before particularly provided to charge the owners of ſuch fiſhing ſhip, ſloop, ſmack, or other fiſhing veſſel or veſſels); and that one moiety of all the money which ſhall be forfeited for any offence committed againſt this act (the application whereof is not herein before particularly appropriated) ſhall, when recovered, go and be paid to the perſon or perſons who ſhall proſecute to conviction any ſuch offender or offenders; and the other moiety thereof, except where the conviction ſhall be for any offence committed in the city of *Weſtminſter*, or for not making the entry at the ſaid coaſt office of the time of the arrival of any ſuch fiſhing ſhip, ſloop, ſmack, or fiſhing veſſel, at the *Nore*, as aforeſaid, ſhall go, and be paid to and for the uſe of the poor of the pariſh in which any ſuch offence ſhall be committed: and where

any conviction ſhall be for any offence committed in the city of *Weſtminſter*, or for not reporting, as herein before is directed, the time of the arrival of any ſuch fiſhing ſhip, ſloop, ſmack, or veſſel, at the ſaid coaſt office, as aforeſaid, the ſaid other moiety of the money which ſhall be forfeited on any ſuch conviction, ſhall go and be paid to the truſtees appointed to put the ſaid recited acts in execution, to be placed by them, or any five or more of them, or their order, to the general account of ſurplus or profits ariſing from the ſaid fiſh market in *Weſtminſter*, and to be appropriated as the ſaid ſurplus in the ſaid act, in the ſaid twenty-ſecond year of his preſent majeſty's reign is directed: and if ſufficient diſtreſs at any time cannot be found, wherefrom the money which ſhall be forfeited by any offender or offenders againſt this act can be levied on his, her, or their goods and chattels, then, and in any ſuch caſe, every ſuch offender and offenders ſhall, by warrant under the hand and ſeal, or hands and ſeals, of one or more ſuch juſtice or juſtices directed to ſome peace officer, be apprehended, if he, ſhe, or they, can be found, and be committed to ſome houſe of correction of the county, city, or place, where any ſuch offender ſhall be apprehended, there to remain and be kept to hard labour for any time not exceeding three months, as any ſuch juſtice or juſtices ſhall order, unleſs the money which ſhall be forfeited by ſuch offender or offenders ſhall be ſooner paid.

For want of ſufficient diſtreſs whereon to levy any forfeiture, the offender is to be committed, and kept to hard labour, for any time not exceeding 3 months.

16. Provided

Limitation of proſecutions.

16. Provided always, and be it further enacted, That no perſon ſhall be puniſhed for any offence againſt this act, unleſs a proſecution ſhall be commenced againſt him for the ſame within two months after every ſuch offence ſhall be committed, or who ſhall have been puniſhed for any ſuch offence under any other law; and that where any perſon ſhall be committed to any houſe of correction for default of payment, or for want of ſufficient diſtreſs being met with to anſwer any penalty incurred by any offence againſt this act, and ſhall remain there during the time for which he, ſhe, or they, ſhall be ſo committed, no ſuch perſon ſhall be liable afterwards to be proſecuted again for nonpayment of ſuch money forfeited; and that any perſon who ſhall inhabit in any pariſh in which any offence againſt this act ſhall be committed, ſhall, notwithſtanding ſuch inhabitancy, be allowed and admitted to be a competent witneſs.

Inhabitants deemed competent witneſſes.

Mitigation of ſmaller penalties.

17. Provided alſo, and be it likewiſe enacted by the authority aforeſaid, That any juſtice or juſtices of the peace before whom any offender ſhall be brought and convicted of any offence againſt this act, ſhall and may, from time to time, as he or they ſhall ſee occaſion, mitigate any of the penalties under the ſum of five pounds hereby inflicted, ſo as ſuch mitigation doth not at any time extend to remit above one half of the penalty inflicted for any offence committed againſt this act; and every ſuch mitigation ſhall be a ſufficient diſcharge to the perſon offending, for

ſo much of the penalty under the ſum of five pounds as ſhall be ſo mitigated.

Form of conviction.

18. And be it further enacted by the authority aforeſaid, That the juſtice or juſtices before whom any perſon ſhall be convicted by virtue of this act, ſhall cauſe ſuch reſpective conviction to be drawn up in the form, or to the effect, following; that is to ſay,

To wit, { *BE it remembered, That on this day of*
in the year of the reign of A. B. *is convicted before of his majeſty's juſtices of the peace for the county of or city of or corporation of*
(as the caſe ſhall happen to be) *for*
and do adjudge him, her, or them (as the caſe ſhall be) *to pay and forfeit the ſum of*

Given under our hands and ſeals
(or my hand and ſeal) the day
and year abovesaid.

Appeal may be made to the next general or quarter ſeſſion,

19. Provided further, and be it alſo enacted, That it ſhall be lawful for any perſon or perſons, who ſhall think him, her, or themſelves aggrieved by the conviction of any juſtice or juſtices of the peace for any offence committed againſt this act, or the ſaid recited act of the twenty-ninth year of his ſaid preſent majeſty's reign, to appeal to the next general or quarter ſeſſion to be holden for the county, city, or place, in which any ſuch

conviction ſhall have been made; the perſon or perſons ſo appealing, firſt entering into a recognizance in double the ſum of money forfeited, before ſuch juſtice or juſtices, to proſecute ſuch appeal with effect, and abide by the order or orders which ſhall be made on ſuch appeal; and giving eight days notice in writing of every ſuch intention to appeal, to the party or parties on whoſe proſecution any ſuch conviction was made; and the juſtices of the county, city, or place, in which any ſuch conviction ſhall have been made, are hereby authorized and required in their next general or quarter ſeſſion after any ſuch appeal ſhall be made, to hear and determine the matter of every ſuch appeal, and to make ſuch order, and to award ſuch coſts and damages, as to them in their diſcretion ſhall ſeem reaſonable; and to levy, by their order or warrant, the coſts which ſhall be ſo awarded, together with ſuch money as they ſhall adjudge to be forfeited, by diſtreſs and ſale of the goods and chattles of any perſon who ſhall refuſe to pay the ſame; and for want of ſufficient diſtreſs, to commit the party or parties to the common gaol or priſon of the county, city, or place, in which he, ſhe, or they, ſhall be apprehended, there to remain and be kept to hard labour for the ſpace of ſix months, unleſs the money which ſhall be adjudged to be forfeited, as well as the coſts ordered to be paid, ſhall be ſooner paid; and ſuch order of any ſuch juſtices at their general or quarter ſeſſions, ſhall be final; and no proceedings of any ſuch juſtices out of ſeſſion, or in their

the appellant entering into a recognizance, and giving due notice to the proſecutor;

and the juſtices at the ſaid ſeſſions are authorized to hear and determine the matter of ſuch appeal, &c.

and their order to be final.

ſaid general or quarter ſeſſion, in purſuance of this act, ſhall be removeable by *certiorari*, or otherwiſe.

Limitation of actions.

19. Provided likewiſe, and be it alſo enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any perſon or perſons, for any thing done in purſuance of this act, every ſuch action or ſuit ſhall be brought within ſix months next after the fact committed, and not afterwards, and ſhall be laid or brought in the county, city, or place, in which ſuch offence ſhall be committed, and not elſewhere; and the defendant or defendants, in every ſuch action or ſuit ſo to be brought, ſhall and may plead the

General iſſue.

general iſſue, and give this act and the ſpecial matter in evidence, at any trial to be had thereupon, and that the ſame was done in purſuance and by the authority of this act; and if it ſhall appear ſo to have been done, or that ſuch action or ſuit ſhall be brought after the time limited for bringing the ſame, as aforeſaid, then the jury ſhall find for the defendant or defendants: and upon ſuch verdict, or if the plaintiff or plaintiffs ſhall become nonſuit, or diſcontinue his action, after the defendant or defendants ſhall have appeared; or if, upon demurrer, judgment ſhall be given againſt the plaintiff or plaintiffs, the de-

Treble coſts.

fendant or defendants ſhall be paid treble coſts, and have ſuch remedy for recovery of the ſame, as any defendant or defendants hath or may have, in any caſe, to recover his, her, or their coſts by law.

Stat. 2 *Geo.* 3. *c.* 15.

An act for the better ſupplying the cities of *London* and *Weſtminſter* with fiſh, and to reduce the preſent exorbitant price thereof; and to protect and encourage fiſhermen.

Preamble.

WHEREAS *the better ſupplying the cities of* London *and* Weſtminſter, *with fiſh, and encouraging fiſhermen, and others, to employ themſelves in fiſhing on the ſea coaſts, and in the navigable rivers of* Great Britain, *will tend to reduce the preſent exorbitant price of fiſh: may it therefore pleaſe your Majeſty that it may be enacted*; And be it enacted by the King's moſt excellent Majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the paſſing of this act, it ſhall be lawful for any perſon, although not brought up in the trade of a fiſhmonger, to buy (ſubject to, and under the reſtrictions herein after contained) at any market, ſea coaſt, creek, port, haven, bank of any river or place, in *Great Britain*, any fiſh in ſeaſon, which ſhall not be unſizeable, or under the dimenſions of the ſame reſpectively, by the laws now in force, are allowed to be ſent to the city of *London*, paying the uſual and accuſtomed dues at the places where any ſuch fiſh ſhall be ſo purchaſed; and afterwards

General licence to any perſon, though not a fiſhmonger, to buy at any market, ſea-coaſt, or river, &c.

any fiſh in ſeaſon, and ſizeable;

paying the accuſtomed dues at the place of purchaſe;

and to ſell the ſame again in any fiſh or fleſh market,

paying the uſual market dues;

wards to ſell again, all ſuch fiſh in public or fixed ſhops, ſtalls, or houſes, in any other market in *Great Britain*, where fiſh or fleſh are or uſually have been ſold, in manner by this act preſcribed, paying only the uſual ſtallage or market dues paid at every ſuch market, without incurring any penalty or forfeiture; any law, ſtatute, cuſtom, or uſage, to the contrary thereof in any wiſe notwithſtanding.

Covent Garden market, and the precincts thereof, excepted.

2. Provided always, and be it enacted by the authority aforeſaid, That nothing herein before contained ſhall extend, or be conſtrued or taken to extend, to permit, impower, or authorize, any perſon or perſons to ſell, or expoſe to or for ſale, any fiſh in *Covent Garden* market, or in any of the precincts thereof, in the county of *Middleſex*.

Such fiſh not to be reſold by the firſt purchaſer, before the ſame ſhall be brought to London or Weſtminſter, or to where conſigned,

under penalty of 20l.

3. And be it further enacted by the authority aforeſaid, That no fiſh allowed to be bought as aforeſaid, ſhall be ſold again by the firſt purchaſer thereof, or any of his or her agents or ſervants, before ſuch fiſh ſhall have been conveyed by land carriage, or otherwiſe, to the cities of *London* or *Weſtminſter*, or ſuch other places in *Great Britain*, as the proprietor or proprietors thereof ſhall think fit, from time to time, to conſign the ſame to; under pain that every one who ſhall offend in the premiſſes ſhall, for every ſuch offence, forfeit and pay the ſum of twenty pounds, to be recovered and applied in manner herein after mentioned.

4. And be it further enacted by the authority aforeſaid, That all ſuch fiſh, allowed to be purchaſed as aforeſaid, ſhall be permitted

to be, from time to time, ſent and conveyed to the place or places to which the proprietor or proprietors thereof ſhall think fit to conſign the ſame, without being ſubject or liable to be ſtopped, in any city, market town, or place, in order to be ſold or expoſed to ſale there, under pretence of any cuſtom or uſage whatſoever.

and to be conveyed to the places conſigned, without being liable to be ſtopped, and expoſed to ſale on the way.

5. And, for the more expeditious conveyance of fiſh by land carriage, be it alſo enacted by the authority aforeſaid, That every carriage which ſhall be uſed for the conveyance of ſuch fiſh as aforeſaid, ſhall only carry fiſh, allowed to be bought as aforeſaid, therein, with the neceſſary package and implements which ſhall belong to ſuch carriage; and ſhall be marked on the outſide *Fiſh Machine Only*; and ſhall have the name or names, and place or places of abode, of the reſpective owner or owners thereof, entered at the office of the commiſſioners for licenſing hackney coaches; and for every ſuch entry, only one ſhilling ſhall be paid to the clerk there; and the ſaid commiſſioners are hereby required to receive every ſuch reſpective entry, and to cauſe the ſame to be regiſtered in the ſaid office; and afterwards the reſpective number of every ſuch reſpective carriage ſhall be marked on ſome conſpicuous part of the outſide thereof, in large figures, painted, or elſe ſhall be put on lead or other metal, and ſhall be fixed in the front, or on one of the ſhafts, or ſome other conſpicuous part of every ſuch reſpective carriage; and that no fiſh carriage

Carriages employed in the ſervice are to carry fiſh only,

and to be marked on the outſide, Fiſh Machine Only;

and are to be entered at the office for licenſing hackney coaches, paying 1 s. for the regiſtering;

and numbered on penalty of 40 s.

and are not liable to be deemed common ſtage waggons, &c.

riage ſhall be deemed or taken to be a common ſtage waggon, wain, or cart: and if any one ſhall neglect to comply with and perform what is herein before directed, touching the marking, regiſtering, numbering, and keeping the number of every ſuch reſpective carriage on ſome part thereof, and ſhall be convicted of any ſuch neglect, in manner herein after-mentioned, he ſhall forfeit and pay, for every ſuch neglect, the ſum of forty ſhillings; to be levied, recovered, and applied, as herein after is directed.

They ſhall be permitted to travel with 4 horſes in pairs, or with 1 horſe; or 3 horſes in length; tho' with narrow wheels; and ſhall only pay the like toll as poſt chaiſes, &c. drawn by a like number of horſes;

6. And be it further enacted by the authority aforeſaid, That every ſuch fiſh carriage numbered and marked as aforeſaid, ſhall be permitted to travel, paſs, or be drawn on any turnpike road, by any number of horſes in pairs not exceeding four, or by any ſingle horſe, or by any number of horſes at length not exceeding three, although the fellies of the wheels of any ſuch fiſh carriage ſhall not be of the breadth or gauge of nine inches from ſide to ſide; and that every ſuch fiſh carriage ſhall only pay the like toll, at every turnpike-gate or bar through which every ſuch fiſh carriage ſhall paſs, as poſt chaiſes, or other chaiſes, drawn by a like number of horſes, or by a ſingle horſe, by the laws now in force, are ſubject and liable to pay there.

and ſhall be allowed to travel on ſundays and holydays;

7. And be it alſo enacted by the authority aforeſaid, That every ſuch fiſh carriage as aforeſaid ſhall be allowed to travel, paſs, and be drawn, on ſundays and holydays, on any road, whether laden or returning empty;

and that the horſe or horſes which ſhall return from drawing any ſuch fiſh carriage, although rode on by any driver of any ſuch fiſh carriage, or drawing back any empty fiſh carriage, ſhall alſo be allowed to paſs on ſundays and holydays on any road, without any driver of any ſuch fiſh carriage, or the rider on any ſuch horſe as aforeſaid, incurring any penalty for ſo travelling therewith.

as ſhall alſo the returned horſes of ſuch carriages;

8. Provided always, and be it enacted by the authority aforeſaid, That no toll ſhall at any time be paid for any ſuch fiſh carriage returning without fiſh, or for any horſe or horſes which ſhall draw the ſame back empty, for paſſing on any turnpike-road, or through any turnpike-gate or bar, or for any horſe or horſes returning from drawing any ſuch fiſh carriage laden as aforeſaid, although ſuch horſe or horſes, or any of them, ſhall be rode on by any driver of any ſuch fiſh carriage, and although ſuch horſe or horſes ſhall not draw back any ſuch empty fiſh carriage.

and neither carriages or horſes, if returning empty, ſhall be liable to pay toll;

9. And be it further enacted by the authority aforeſaid, That if any perſon ſhall put any game, or any other thing except fiſh as aforeſaid, and the baſkets and other neceſſary package in which the ſame ſhall be packed, and the neceſſary implements of every ſuch fiſh carriage, into any ſuch fiſh carriage to be conveyed thereby; every perſon, other than the driver of any ſuch fiſh carriage, who ſhall ſo put any game or other thing than fiſh, and the baſkets and other neceſſary package and implements as aforeſaid, into any ſuch fiſh carriage, and to be thereby conveyed, ſhall, on being convicted thereof in manner herein after

and if any game, or other thing beſides fiſh, and the neceſſary implements of the carriage be put therein for conveyance, the perſon putting in the ſame ſhall forfeit 5 l.

and if the driver ſhall take up, or ſuffer any paſſenger, game, or other thing, to be carried therein,

he ſhall forfeit 40 s.

and on non-payment, ſhall be committed, and kept to hard labour for any time not exceeding one month.

after mentioned, forfeit and pay for every ſuch offence the ſum of five pounds, to be levied, recovered, and applied, in manner herein after ſpecified: and if the driver of any ſuch fiſh carriage ſhall take up, or ſuffer any paſſenger, game, or other thing except fiſh, and the baſkets and other neceſſary package and implements as aforeſaid, to be at any time carried or conveyed in or by any ſuch fiſh carriage; every driver of every ſuch fiſh carriage, who ſhall ſo offend in the premiſſes, and be thereof convicted in manner herein after mentioned, ſhall, for every ſuch offence, forfeit and pay the ſum of forty ſhillings, to be recovered and applied in manner herein after mentioned: and if, on the conviction of any driver of any ſuch fiſh carriage, the ſum forfeited ſhall not be forthwith paid, the juſtice or juſtices before whom any ſuch driver of any ſuch fiſh carriage ſhall be convicted, ſhall, by warrant under his hand and ſeal, or their hands and ſeals, commit every ſuch driver of any ſuch fiſh carriage, who ſhall be ſo as aforeſaid convicted, to the houſe of correction of the county, city, or place, in which the offence for which any ſuch driver was convicted, or where any ſuch driver ſhall be apprehended, there to remain and be kept to hard labour for any time not exceeding one month, as any juſtice or juſtices ſhall order, unleſs the money forfeited ſhall be ſooner paid.

If bulk ſhall be broke of any fiſh carriage conſigned for

10. And be it further enacted by the authority aforeſaid, That if the owner or any other perſon who ſhall have the care or conduct of any ſuch fiſh carriage as

aforeſaid, which after the paſſing this act ſhall be loaded with fiſh as aforeſaid, and conſigned for the ſupply of the cities of *London* or *Weſtminſter*, ſhall break bulk before the ſame ſhall have been brought within the weekly bills of mortality, or ſell, or expoſe to ſale, any of the fiſh which ſhall be loaded in any ſuch fiſh carriage, before the ſame ſhall have been brought to the cities of *London* or *Weſtminſter*, or within the weekly bills of mortality, and expoſed there to or for ſale in manner herein after directed, he, ſhe, or they, who ſhall ſo offend in the premiſſes, ſhall, on being thereof convicted in manner herein after mentioned, forfeit and pay for every ſuch offence the ſum of ten pounds, to be levied, recovered, and applied, in manner herein after mentioned.

the London markets, &c. before being brought within the bills of mortality, or ſale made of the fiſh before they are expoſed in the ſaid markets, the offender ſhall forfeit 10 l.

II. And be it alſo enacted by the authority aforeſaid, That all fiſh as aforeſaid which ſhall be brought by land carriage to the cities of *London* or *Weſtminſter*, or to any other place within the weekly bills of mortality, ſhall, with all convenient ſpeed after the ſame ſhall be ſo brought there, be ſorted, and, the next morning at fartheſt after the ſame ſhall be ſo brought there, ſhall be openly and publickly offered and expoſed to ſale in ſome publick market or markets within the weekly bills of mortality (except ſuch next day ſhall happen to be a *Sunday*, and in ſuch caſe, then on *Monday* morning next following) and that, until ſuch fiſh as aforeſaid ſhall be ſo expoſed to ſale in ſome public market or markets as aforeſaid, no part thereof ſhall be ſold, or offered

The fiſh, after being ſo brought up, is to be forthwith ſorted, and expoſed to ſale in ſome public market the next morning, Sundays excepted;

fered to or for ſale, by retail; upon pain that every perſon who ſhall offend in the premiſſes, and ſhall be thereof convicted in manner herein after-mentioned, ſhall forfeit and pay, for every ſuch offence, the ſum of ten pounds, to be levied, recovered, and applied, in manner herein after-mentioned.

and until ſuch fiſh is ſo expoſed, no part thereof is to be ſold by retail, on penalty of 10 l.

but mackerell brought up by ſuch carriages may be ſold on Sundays.

12. Provided always, and be it enacted, That nothing in this act contained ſhall be conſtrued to prohibit the ſelling any mackerell, which ſhall be brought by any ſuch fiſh carriage as aforeſaid, before or after divine ſervice on a *Sunday*.

All contracts made for fiſh, except for ſalmon and lobſters, are vacated after 1 May 1762,

and the parties diſcharged from the penalties of their contracts;

and perſons contracting after the ſaid time for buying up fiſh, other than ſalmon and lobſters, before the ſame ſhall firſt be brought to market, and duly expoſed to ſale there,

13. And be it likewiſe enacted by the authority aforeſaid, That all contracts made by or with any perſon or perſons for any fiſh, except ſalmon and lobſters, from and after the firſt day of *May* one thouſand ſeven hundred and ſixty-two, ſhall be and are hereby declared to be void, ſo far as the ſame ſhall relate to, or be intended to take effect at, any time ſubſequent to, the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-two; and the party and parties to every ſuch contract and contracts is and are hereby reſpectively diſcharged from all penalties and forfeitures he or they may incur by reaſon of the non-performance of any ſuch contract or contracts: and if, from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-two, any perſon or perſons ſhall enter into or make any contract or contracts for buying up any fiſh, except ſalmon and lobſters, before the ſame ſhall be firſt brought to an open market, or ſome uſual place for the ſale of fiſh, and before the

ſame ſhall be there expoſed in the ordinary manner, and for the uſual time fiſh ſhall be there expoſed for publick ſale; every ſuch contract and contracts is and are hereby declared to be abſolutely void, and every party thereto ſhall forfeit and pay, for every ſuch contract which he or ſhe ſhall be a party to, or concerned in, on being convicted thereof in manner herein after-mentioned, the ſum of fifty pounds, to be recovered, levied, and applied, in manner herein after-mentioned.

forfeit 50l. and the contract is declared void:

14. Provided always, and be it alſo enacted by the authority aforeſaid, That after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-two, no contract or agreement which ſhall be made or entered into for the buying of any ſalmon or lobſters which ſhall be taken in any river, or in any of the ſeas, or on any of the ſea coaſts of *Great Britain*, ſhall be or continue in force for any longer time than for one year, to be computed from the date of every ſuch reſpective contract or agreement which ſhall be entered into in writing; and if not entered into in writing, then only for one year, to be computed from the time of the making or entering into every ſuch parol contract or agreement reſpectively.

And after 1 May 1762, no contract for Britiſh ſalmon and lobſters ſhall be in force longer than 1 year; and the like rule is to take place with reſpect to any parol contracts.

15. And be it likewiſe enacted by the authority aforeſaid, That no perſon or perſons ſhall, at any time after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-two, employ, or be employed by, any other perſon or perſons in buying, or to buy, in or at any market in the city of *London*, or in the city of *Weſtminſter*, or elſewhere within the weekly bills of mortality, any fiſh which ſhall be

After 1 May 1762, no perſon may employ, or be employed in buying at the markets of London or Weſtminſter, &c. fiſh brought there for ſale, to be afterwards divided amongſt fiſhmongers, or others, to be ſold; nor may any perſon buy in the ſaid markets any fiſh but what ſhall be for his own ſale or uſe, on penalty of 20l.

be brought there to be ſold, to be divided by lots or in ſhares amongſt any fiſhmongers or other perſons, in order to be afterwards put to ſale again, or ſold by retail; nor ſhall any fiſhmonger or other perſon, at any time after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-two, buy in any market in *London*, or in the ſaid city of *Weſtminſter*, or elſewhere within the weekly bills of mortality, any fiſh, but what ſhall be for his own ſale or uſe only; upon pain that every perſon who ſhall be convicted of any ſuch offence, in manner hereby directed, ſhall forfeit and pay the ſum of twenty pounds for every ſuch offence, to be levied, recovered, and applied, in the manner herein after directed.

No ſaleſman or other perſon may refuſe to ſell, or enter into an agreement not to ſell to or for any particular perſon's uſe, any fiſh expoſed to ſale at a public market, on penalty of 20 l.

16. And be it further enacted by the authority aforeſaid, That if any proprietor of fiſh, or any ſaleſman or perſon intruſted or employed to ſell any fiſh in any public market, ſhall refuſe to ſell, or ſhall enter into any agreement or confederacy not to ſell, to or for the uſe of any particular perſon or perſons, any fiſh which ſhall be brought or expoſed to or for ſale at or in any ſuch public market; then, and in every ſuch caſe, every perſon, who ſhall ſo offend in the ſaid premiſſes, and ſhall be thereof convicted in the manner by this act directed, ſhall, for every ſuch offence, forfeit and pay the ſum of twenty pounds, to be levied, recovered and applied, in manner hereby directed.

And all fiſh of the reſpective ſorts ſpecified in the act, brought af-

17. And be it further enacted by the authority aforeſaid, That all fiſh of any of the reſpective ſorts herein after ſpecified, which, after the ſaid firſt day of *May* one thouſand ſe-

ven hundred and ſixty-two, ſhall be brought for ſale to the cities of *London* or *Weſtminſter*, or within the weekly bills of mortality, ſhall be openly and publickly expoſed for ſale at the firſt hand; and ſhall be ſold in no greater number or quantity of fiſh in any one lot or parcel, or by any greater weight of fiſh in any one lot or parcel, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock, or in any other market within the weekly bills of mortality, than herein after is directed and preſcribed touching the ſame reſpectively; and that every lot or parcel of ſuch fiſh as aforeſaid, ſhall conſiſt only of one ſort of fiſh, and ſhall not be compoſed of two or more different ſorts of fiſh; that is to ſay,

ter 1 May 1762, for ſale to the London markets, ſhall be openly ſold at the firſt hand, and in no greater number or quantity in a lot than is preſcribed; and every lot is to conſiſt of one ſort of fiſh only.

All freſh ſalmon, ſturgeon, large freſh cod, ſkait, pike, turbot, bret, bril, pearl, kingſton, ling, and dorys, by the ſingle fiſh; all half freſh cod, not exceeding two in any one lot; all quarter freſh cod, not exceeding four in any one lot; all mullets, cole fiſh, ſalmon trout, and other trout, not exceeding two in any one lot; all ſmall cod, not exceeding twenty-four in any one lot; in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding eight in any one lot:

The ſpecies of fiſh, and number and quantity thereof allowed to be ſold in a lot at Billingſgate, or other markets.

All ſmall pike not exceeding ſix in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding four in any one lot:

All large haddock, not exceeding four in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding two in any one lot:

All ſmall haddock, not exceeding twenty-four in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding eight in any one lot:

All perch, above ſix inches long from the eye to the fork of the tail thereof, not exceeding twelve in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding eight in any one lot:

All carp, gurnet, tench and ſea baſs, not exceeding ſix in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding four in any one lot:

. All thornbacks, not exceeding two in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding one in any one lot:

All large ſoals, not exceeding four pair in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding two pair in any one lot:

All ſmall ſoals, not exceeding eight pair in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding four pair in any one lot:

All mackerel, whitings, whiting pouts, plaice, dabbs, herrings, pilchards, garb fiſh, flounders, and maids, not exceeding ſixty in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding thirty in any one lot:

All ſmelts, not exceeding fifty-two in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding twenty-ſix in any one lot:

All eels, not exceeding twenty pounds weight in any one lot, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding ten pounds weight in any one lot, unleſs any ſingle fiſh ſhall exceed that weight:

All large lobſters and crabs, not exceeding, of either ſort, in any one lot, twenty, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding ten of either ſort in any one lot:

All ſmall lobſters and crabs not exceeding, of either ſort, in any one lot, forty, in *Billingſgate* market, or within one hundred and fifty yards of *Billingſgate* dock; and, in any other market within the weekly bills of mortality, not exceeding twenty of either ſort in any one lot:

None of the ſaid ſeveral ſpecies of fiſh may be bought or ſold at the firſt hand in the ſaid markets in a greater number or quantity in a lot, than is preſcribed, nor more than one ſort of fiſh in a lot, be ſold, or offered for ſale, on penalty of 5 l.

And if any perſon or perſons ſhall ſell or buy any of the fiſh aforeſaid, at the firſt hand, in any market or markets in the city of *London*, or within one hundred and fifty yards of *Billingſgate* dock; or in any market in the city of *Weſtminſter*, or within the weekly bills of mortality, in any lot or parcel, containing any greater number of any ſort of fiſh as aforeſaid in any ſuch lot or parcel, or any greater weight of eels in any lot or parcel, than is herein before directed and appointed to be ſold in any one lot or parcel; or if any one ſhall ſell, or offer for ſale, in any ſuch lot or parcel, more than one ſort of any of the fiſh herein before ſpecified; he, ſhe, or they, who ſhall ſo offend in the premiſſes, and be convicted of any ſuch offence in manner herein after mentioned, ſhall, for every ſuch offence, forfeit and pay the ſum of five pounds, to be levied, recovered, and applied, in manner herein after directed.

But a ſmaller number of any of the ſaid fiſh, than a lot conſiſts of, if it contains more than one; and alſo a leſſer weight of eels than

18. Provided always, That notwithſtanding any thing herein before contained, it ſhall be lawful for any perſon to expoſe to or for ſale, and to ſell in *Billingſgate* market, or in any other market within the weekly bills of mortality, any of the ſaid herein before-mentioned reſpective ſorts of fiſh, where more than one is to be contained in any one lot, as

aforeſaid, in any ſmaller number; or any eels by any leſſer weight than herein before is preſcribed for the ſelling, in any one lot, any of the ſaid reſpective ſorts of fiſh herein before ſpecified.

makes one lot, may be ſold or expoſed to ſale in the ſaid markets.

19. And be it further enacted by the authority aforeſaid, That no perſon or perſons, from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-two, ſhall a ſecond time ſell or expoſe to or for ſale in *Billingſgate* market, or within the ſpace of one hundred and fifty yards from *Billingſgate* dock, or in any other market in the city of *London*, or within the weekly bills of mortality, any fiſh, which in the ſame day ſhall have been before ſold in the ſame market; but any buyer of fiſh in any of the ſaid markets may ſell the ſame again, whilſt found and wholeſome, in any other place or places whatſoever; any law, cuſtom, or uſage, to the contrary thereof in any wiſe notwithſtanding; upon pain that every one who ſhall offend in the premiſſes, and ſhall be thereof convicted in manner hereby preſcribed, ſhall, for every ſuch offence, forfeit and pay the ſum of ten pounds, to be levied, recovered, and applied, in manner herein after mentioned.

No fiſh may be ſold again, or expoſed to ſale the ſame day, in the ſame market where it was before ſold, on penalty of 10 l. but the buyer may ſell the ſame, whilſt found and wholeſome, in any other place.

20. And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-two, no perſon ſhall ſell, or expoſe to or for ſale, at the firſt hand, in any market in the cities of *London* or *Weſtminſter*, or within the limits of the weekly bills of mortality, any of the ſeveral ſorts of fiſh herein before ſpecified, before he, ſhe, or they, ſhall

Before any fiſh, to be ſold at the firſt hand in any of the ſaid markets, be expoſed to ſale, an account of the ſorts, and quantity of each, in large le-have, from time to time, firſt placed or put up, in ſome conſpicuous manner, on or over the form, bench, ſtall, or place, at which he or ſhe ſhall intend or offer or expoſe for ſale, or ſhall offer or expoſe for ſale any of ſuch fiſh in any ſuch market, a true particular or account, and in a large, fair, and legible character, and either wrote or printed, diſtinguiſhing therein the ſeveral ſpecies or ſorts of all ſuch fiſh as aforeſaid, and the quantity of every ſort thereof reſpectively which he, ſhe, or they, ſhall then have, or have been intruſted with or employed to ſell in any ſuch market, except as to the number of flounders, plaice, dabbs, mackerel, maids, herrings, and pilchards, which ſhall be brought to any ſuch market for ſale: and if, at any time of the morning or day in which any ſuch account ſhall have been ſo placed up, and before the market of that day ſhall be ended or over, any other fiſh of the ſpecies or ſorts herein before mentioned, except as before excepted, ſhall be brought or ſent to any ſuch market as aforeſaid to be ſold, the perſon who ſhall be employed or intruſted to ſell the ſame, before he or ſhe ſhall ſell, or offer or expoſe to or for ſale, all or any of ſuch other fiſh, ſhall add a true account or particular thereof to the account before put up, if he or ſhe had before put up any ſuch account, and if not, ſhall put up ſuch account thereof as is herein before directed; and the party or parties hereby directed to put up ſuch account and accounts as aforeſaid, ſhall take care that every ſuch account and accounts ſhall continue up, where

gible characters, is to be put up at the fiſh ſtand,

the number of flounders, plaice, dabbs, excepted; and alſo of mackerel, maids, herrings, and pilchards; and if any other fiſh of the ſorts mentioned in the act be brought for ſale, before the market of the day is over, they are likewiſe to be added to the account, before they are expoſed to ſale; and the ſaid accounts are to be kept the ſame ſhall have been firſt placed, until all the fiſh ſpecified therein ſhall be ſold, or the market of the day ſhall be over or ended, without being defaced or obliterated; upon pain that every one, who ſhall neglect to put up any ſuch account, or ſhall not continue up ſuch account as hereby is directed, during the time ſuch account ought to continue up, and ſhall be convicted in manner herein after preſcribed of any ſuch offence, ſhall, for every ſuch offence, forfeit and pay the ſum of five pounds, to be levied, recovered, and applied, in the manner herein after mentioned; and that every perſon who ſhall be convicted, in manner herein after directed, of wilfully taking down, defacing, obliterating, or altering, or cauſing to be taken down, defaced, obliterated or altered, any ſuch account hereby directed to be placed up as aforeſaid, at any time whilſt the ſame, according to the intent of this act, ought to continue up, ſhall, for every ſuch laſt-mentioned offence, forfeit and pay the ſum of forty ſhillings, to be levied, recovered, and applied, in manner herein after-mentioned.

up, undefaced, till all the fiſh be ſold, or the market be over;

on penalty of 5l.

or if any perſon before ſuch time ſhall wilfully take down, deface, or alter, the accounts ſo put up, or cauſe the ſame to be done, he forfeits 40 s.

21. And be it further enacted by the authority aforeſaid, That no fiſherman, mariner, or other perſon who ſhall be employed on board any fiſhing ſhip, ſloop, ſmack, veſſel, or boat, ſhall, after her arrival from fiſhing, wilfully deſtroy, or throw or caſt away any fiſh, which in any ſuch fiſhing ſhip, ſloop, ſmack, veſſel, or boat, ſhall have been brought from ſea, or caught in any navigable river, that is not unwholeſome, periſhed, or un-

marketable,

No fiſherman, &c. after the arrival of his veſſel from fiſhing, may deſtroy, or caſt away, any of the fiſh, not being unwholſome, periſhed, or unmarketable, remaining unſold after market is over; on penalty of being committed, and kept to hard labour for any time not exceeding 2 months, nor leſs than 1 week.

marketable, except ſprats, which ſhall remain unſold when the market, to which the ſame ſhall be ſent for ſale, ſhall be ended; and if any ſuch fiſherman, mariner, or other perſon, ſhall offend in the premiſſes, and be thereof convicted in manner herein after preſcribed, every ſuch fiſherman, mariner, or other perſon, who ſhall be ſo convicted, ſhall be committed to the houſe of correction of the county, city, or place, in which any ſuch offender ſhall be convicted or apprehended, there to remain and be kept to hard labour for any time not exceeding two months, nor leſs than one week, as the juſtice or juſtices, before whom any ſuch offender ſhall be convicted, ſhall order.

All perſons coming under the four following deſcriptions, employed in the fiſheries of theſe kingdoms, are exempted from being impreſſed into the King's ſervice, viz. 1ſt, maſters of fiſhing veſſels, who, either themſelves or their owners, have, or within 6 months before applying for a

22. And be it alſo enacted by the authority aforeſaid, That from and after the paſſing of this act, all and every the perſon and perſons within the four degrees or deſcriptions herein after ſpecified, who ſhall be employed in the fiſheries of theſe kingdoms, ſhall be freed and exempted from being impreſſed into the ſervice of his Majeſty, his heirs, or ſucceſſors, other than and except in the caſes herein after excepted; that is to ſay, firſt, every maſter who ſhall have the care or conduct of any fiſhing ſhip, ſloop, ſmack, veſſel, or boat, which ſhall be employed in the fiſhery on any of the ſea coaſts of *Great Britain*, or in any of the navigable rivers within *Great Britain*; and who, or ſome owner of which fiſhing ſhip, ſloop, ſmack, veſſel or boat, ſhall have, or within ſix calendar months before the applying for any protection, as herein

after is allowed, ſhall have had, one or more apprentice or apprentices, under the age of ſixteen years each, bound to him, or to any ſuch owner as aforeſaid, for a term not leſs than five years; and which apprentice or apprentices, in purſuance of ſuch binding, actually ſhall be, or have been, in the ſervice of ſuch maſter, or owner, in the buſineſs of a fiſherman; ſecondly, every ſuch apprentice, not exceeding the number of four apprentices to every ſuch maſter or owner as aforeſaid of any fiſhing ſhip, ſloop, ſmack, or veſſel, of or above the burthen of thirty tuns; and not exceeding the number of two apprentices to every ſuch maſter or owner as aforeſaid, of any fiſhing ſhip, ſloop, ſmack, veſſel, or boat, under the ſaid burthen of thirty tuns, during the time every ſuch reſpective apprentice as aforeſaid ſhall continue as an apprentice in the actual ſervice of ſuch his maſter only, or of his repreſentatives or aſſigns, in the buſineſs of a fiſherman, and in no other ſervice, and until the reſpective age of twenty years of every ſuch apprentice who ſhall ſo long continue in the fiſhing trade: thirdly, one mariner, beſides the maſter and his apprentice or apprentices as aforeſaid, who ſhall be employed to navigate or fiſh, in any fiſhing ſhip, ſloop, ſmack, or veſſel, of the burthen of ten tuns or upwards, on any parts of the ſea coaſts of *Great Britain*, during the time, ſuch mariner ſhall continue and be ſo actually and truly employed in the ſaid fiſhing ſervice: and, fourthly, any landman who ſhall enter on board any ſuch fiſhing ſhip, ſloop,

ſmack,

protection, ſhall have had, one or more apprentices, under 16 years of age, bound for 5 years, and employed in the buſineſs of fiſhing; 2dly, all ſuch apprentices, not exceeding 4 to every maſter or owner of a fiſhing veſſel of 30 tuns burthen, or upwards; and 2 to every veſſel under 30 tuns; during the time of their apprenticeſhip, and till the age of 20 years, they continuing for the time in the buſineſs of fiſhing only; 3dly, one mariner, beſides the maſter and apprentices, to every fiſhing veſſel of 10 tuns burthen or upwards, employed on the ſea coaſt, during his continuance in ſuch ſervice; 4thly, any landman entering, and employed on board ſuch veſſel, for 2 years from his firſt going to ſea, and to the end of the voyage then engaged in, if he ſo long continue in ſuch ſervice.

ſmack, or veſſel, of the burthen of ten tuns or upwards, and be actually employed in navigating or fiſhing therein, on any part of the ſea coaſts of *Great Britain*, for and during the ſpace of two years, to be computed from the time of his firſt going to ſea, employed as aforeſaid in any ſuch fiſhing ſhip, ſloop, ſmack, or veſſel, of the burthen of ten tuns or upwards, as aforeſaid, and to the end of any fiſhing voyage he may then be engaged in, and if he ſhall continue and be ſo long really and truly employed in ſuch ſervice.

On affidavit being made before ſome juſtice, and laid before the admiralty; that the perſons therein named and deſcribed, come within ſome or one of the above deſcriptions, (inſerting the tunnage of the veſſel, and port ſhe belongs to; the name and deſcription of the maſter, the age of every ſuch apprentice, and term he is

23. And, to ſecure to the ſeveral perſons herein before deſcribed, the benefit intended for them reſpectively by this act, and to puniſh the perſons who ſhall act contrary to the true intent and meaning hereof, Be it further enacted by the authority aforeſaid, That on an affidavit ſworn before ſome juſtice or juſtices of the peace, making out that the perſon or perſons named and deſcribed in ſuch affidavit come, or is or are within ſome or one of the deſcriptions herein before ſpecified, and inſerting therein the tunnage of every ſuch fiſhing ſhip, ſloop, ſmack, veſſel, or boat, and the port or place to which ſhe belongs, and the name and deſcription of every ſuch maſter, and the age of every ſuch apprentice, and the term for which every ſuch apprentice ſhall be bound, and the date of his indenture, and the name, age, and deſcription, of every ſuch mariner and landman reſpectively, and the time of every ſuch landman's firſt going

to ſea, being offered to the lord high admiral of *Great Britain*, or to the commiſſioners for executing the office of lord high admiral of *Great Britain*, for the time being, or any three or more of them, or left at the office of admiralty; the ſaid lord high admiral, or commiſſioners of the admiralty for the time being, is and are hereby directed and required, with all convenient ſpeed after every ſuch affidavit ſhall be tendered to him or them, or left at the admiralty office (unleſs he or they ſhall have reaſonable cauſe to ſuſpect the truth of any ſuch affidavit, and in every ſuch caſe he and they is and are hereby directed to cauſe inquiry to be made into the truth of the matters contained in every ſuch affidavit) from time to time, to grant a ſeparate protection to every ſuch perſon as aforeſaid reſpectively, during the time he is allowed by this act to be protected, and without any fee or reward to be paid or taken for the ſame; and every perſon who ſhall be impreſſed contrary to the intent of this act, ſhall, on producing the protection which ſhall have been granted to him in purſuance of this act to the commanding officer, who ſhall have in his cuſtody, or under his care, any ſuch impreſſed perſon as aforeſaid, be forthwith diſcharged and releaſed by ſuch commanding officer.

bound for, with the date of his indenture; and the name, age, and deſcription of every ſuch mariner and landman, with the time of ſuch landman's firſt going to ſea) the admiralty ſhall thereupon, unleſs they ſuſpect the truth of ſuch affidavit, (which in ſuch caſe they are directed to enquire into) grant, without any fee, a ſeparate protection to every ſuch perſon; on producing whereof, they are to be forthwith releaſed, if impreſſed.

24. And be it further enacted by the authority aforeſaid, That if, during the continuance of any protection which ſhall be granted under this act, any perſon who ſhall be thereby protected ſhall be impreſſed to ſerve his majeſty, his heirs, or ſucceſſors, other than

If any ſuch protected perſon ſhall be impreſſed, except in the caſe of invaſion, or imminent than and except in the caſe of an actual invaſion of theſe kingdoms, or imminent danger thereof, and ſignified by ſome order of his majeſty, or his heirs, or of his or their privy council, to the lord high admiral, or to the commiſſioners for executing the office of lord high admiral of *Great Britain* for the time being; and on producing the protection which ſhall have been ſo granted to him, to the commanding officer of the party or gang who ſhall impreſs any ſuch perſon protected as aforeſaid; or if offering to produce the ſame for the inſpection of ſuch the commanding officer, any ſuch commanding officer ſhall refuſe or neglect to ſee or examine ſuch protection, or ſhall detain the ſame protection from the party intitled thereto, and ſhall not forthwith diſcharge the party who ſhall be ſo impreſſed; or if the party ſo impreſſed ſhall be carried on board any ſhip or veſſel of or in the ſervice of his majeſty, his heirs, or ſucceſſors, and the captain, or any officer, who ſhall have the command on board any ſuch ſhip or veſſel of or in the ſervice of his majeſty, his heirs, or ſucceſſors, ſhall not, on any ſuch protection granted as aforeſaid being produced or tendered to him; or if ſuch protection ſhall have been taken away from the party to whom it was ſo granted, at or after his having been ſo impreſſed, then, if on an affidavit being made before ſome juſtice or juſtices, of the peace that ſuch protection was ſo granted, and continues in force, and was taken away from the party to whom the ſame was ſo granted, either at or after the time he was impreſſed, and being tendered to the captain or officer who

danger thereof,

and on producing, or offering to produce, his protection, the commanding officer ſhall not examine, or ſhall withhold ſuch protection, and not releaſe him;

or if, being carried on board any of the King's ſhips, the commanding officer there ſhall not diſcharge him on ſuch protection being produced; or if taken away from him, on tendering to him an affidavit made before ſome juſtice, that ſuch protection was granted, and in force, who ſhall have the command on board any ſuch ſhip or veſſel as aforeſaid, ſuch captain or officer having the command as aforeſaid, ſhall not forthwith diſcharge the party who ſhall have been ſo impreſſed and brought on ſhipboard as aforeſaid; or if any captain or officer having command as aforeſaid, or any of the crew or company under him, ſhall take away or detain any ſuch protection granted as aforeſaid; then every perſon who, in any of the ſaid caſes, ſhall ſo offend, except in the caſes herein before excepted, ſhall reſpectively forfeit and pay to the party impreſſed, if not an apprentice, and, if an apprentice, then to the reſpective maſter of every ſuch apprentice, the ſum of twenty pounds, to be recovered and levied in like manner as other forfeitures incurred by this act are herein after directed to be recovered and levied.

and was taken away, when he was impreſſed; or if any commanding officer, or any of the crew under him ſhall take away, or detain, ſuch protection; the offender, in any of the ſaid caſes, ſhall forfeit 20l. to the parry impreſſed, not being an apprentice, and if an apprentice, then to his maſter.

25. And be it further enacted by the authority aforeſaid, That if any maſter or owner of any ſuch fiſhing ſhip, ſloop, ſmack, veſſel, or boat, ſhall knowingly harbour, entertain, or employ, in any ſuch fiſhing ſhip, ſloop, ſmack, veſſel, or boat, any ſeaman or landman, who ſhall have deſerted from his majeſty's ſervice; every ſuch maſter or owner as aforeſaid, on being convicted of any ſuch offence in manner herein after-mentioned, ſhall, for every ſuch offence, forfeit and pay the ſum of twenty pounds, to be levied, recovered, and applied, in manner herein after ſpecified.

The maſter or owner of any fiſhing veſſel, knowingly harbouring, &c. a deſerter from the King's ſervice, forfeits 20l.

Juſtices are impowered to hear and determine all offences committed againſt this act within their reſpective juriſdictions;

and the pecuniary penalties, where the time is not otherwiſe limited, are to be paid in 24 hours;

and may be levied by diſtreſs and ſale, together with all charges, as aſcertained by a juſtice;

26. And be it further enacted by the authority aforeſaid, That all juſtices of the peace, within their reſpective juriſdictions, ſhall hear and determine all offences committed againſt the true intent of this act; and that all pecuniary penalties and forfeitures inflicted and made payable by this act, whereof the time for payment is not herein before directed, ſhall be paid within twenty-four hours after the conviction of the offender, either by his or her confeſſion, or by the oath of one or more credible witneſs or witneſſes; which oath every juſtice, within his reſpective juriſdiction, is hereby authorized and required to adminiſter; and that any juſtice, or juſtices, within his or their reſpective juriſdiction, may iſſue a warrant under his hand and ſeal, or their hands and ſeals reſpectively, directed to any peace officer within their reſpective juriſdiction, to levy the ſame by diſtreſs of the goods and chattels of the reſpective perſon and perſons who ſhall be ſo convicted, and which ſhall be found within the juriſdiction of any ſuch juſtice or juſtices; and if, within five days from any ſuch diſtreſs being taken, the money forfeited ſhall not be paid, together with the coſts of ſuch diſtreſs, the goods ſo diſtrained ſhall be appraiſed and ſold, rendering the overplus, if any, after deducting the penalty or forfeiture, and the coſts and charges of the diſtreſs and ſale, to the owner or owners thereof; which charges ſhall be aſcertained by ſome juſtice or juſtices of the county, city, riding, diviſion, or place, in which the offender or offenders ſhall have

been convicted; and if ſufficient diſtreſs cannot at any time be found, whereby the money which ſhall be forfeited by any offender or offenders againſt this act (other than the driver of any fiſh carriage as aforeſaid) can be levied on his, her, or their goods and chattels, then, and in every ſuch caſe, on proof thereof upon oath before ſome juſtice or juſtices, within whoſe reſpective juriſdiction any ſuch offender or offenders ſhall reſide or be, ſuch juſtice or juſtices ſhall, on the application of any proſecutor or proſecutors of any ſuch offender or offenders, iſſue a warrant under the hand and ſeal, or hands and ſeals, of any ſuch juſtice or juſtices, directed to ſome peace officer or officers, to apprehend every ſuch offender or offenders, if he, ſhe, or they can be found, and to convey and commit every ſuch offender and offenders to the houſe of correction of the county, city, or place, where any ſuch offender or offenders ſhall be found and apprehended, there to remain and be kept to hard labour for any time not exceeding two months, as any ſuch juſtice or juſtices ſhall order, unleſs the money which ſhall be forfeited by ſuch offender or offenders ſhall be ſooner paid.

and for want of ſufficient diſtreſs, (except in the caſe of a driver of a fiſh carriage)

the offender, on the application of the proſecutor, ſhall be committed to hard labour, for any time not exceeding 2 months, unleſs the forfeiture be ſooner paid.

Provided always, and it is hereby enacted, That no perſon ſhall ſuffer any puniſhment for any offence committed againſt this act, unleſs the proſecution for the ſame be commenced within three calendar months after ſuch offence committed; and that where any perſon ſhall ſuffer impriſonment, purſuant to this act, for any offence contrary thereto, in

Proſecutions to be commenced within 3 months after the offence; and perſons ſuffering impriſonment for any offence, are not liable to pay the penalty.

default of payment of any penalty hereby impoſed, ſuch perſon ſhall not be liable afterwards to pay ſuch penalty.

Any of the parties concerned in contracting for fiſh, contrary to this act, giving the firſt information againſt, and convicting others, is indemnified himſelf, and intitled to a moiety of the penalty.

27. Provided always, and be it enacted by the authority aforeſaid, That if any perſon, who ſhall contract for fiſh contrary to the intent of this act, ſhall, before information ſhall be made againſt him for having ſo contracted for the ſame, inform againſt any other party who ſhall have entered into any ſuch contract, and the party or parties who ſhall be ſo informed againſt ſhall afterwards, on any ſuch information, be duly convicted of any ſuch offence in manner herein preſcribed; then, and in every ſuch caſe, the perſon who ſhall have ſo informed againſt and proſecuted to conviction any ſuch other perſon as aforeſaid, ſhall be acquitted and releaſed from all penalty and forfeiture which the party ſo informing had incurred by having entered into, or been a party to, any ſuch contract, and ſhall be intitled to and have one moiety of the penalty which ſhall be forfeited by reaſon of the conviction of the party informed againſt.

Evidences may be ſummoned, and examined on oath, on behalf of the proſecutor againſt offenders;

28. And be it further enacted by the authority aforeſaid, That if it ſhall be made out, by the oath of any credible perſon or perſons, to the ſatisfaction of any juſtice or juſtices of the peace, that any one, within the juriſdiction of any ſuch juſtice or juſtices, is likely to give or offer material evidence on behalf of the proſecutor of any offender or offenders againſt the true intent and meaning of this act, or on behalf of the perſon or perſons accuſed,

cuſed, and will not voluntarily appear before ſuch juſtice or juſtices, and be examined, and give his, her, or their evidence concerning the premiſſes; every ſuch juſtice or juſtices is and are hereby authorized and required to iſſue his or their ſummons, to convene every ſuch witneſs and witneſſes before any ſuch juſtice or juſtices, at ſuch ſeaſonable time as ſuch ſummons ſhall be fixed; and if any perſon ſo ſummoned ſhall neglect or refuſe to appear at the time by ſuch ſummons appointed, and no juſt cauſe ſhall be offered for ſuch neglect or refuſal, then, after proof by oath of ſuch ſummons having been duly ſerved upon the party or parties ſo ſummoned, every ſuch juſtice and juſtices is and are hereby authorized and required to iſſue his or their warrant under his hand and ſeal, or their hands and ſeals, to bring every ſuch witneſs or witneſſes before any ſuch juſtice or juſtices; and, on the appearance of any ſuch witneſs or witneſſes before any ſuch juſtice or juſtices, every ſuch juſtice or juſtices is and are hereby authorized and impowered to examine, upon oath, every ſuch witneſs; and if any ſuch witneſs on his or her appearance, or on being brought before ſuch juſtice or juſtices, ſhall refuſe to be examined, on oath, concerning the premiſſes, without offering any juſt cauſe for ſuch refuſal, any ſuch juſtice or juſtices, within the limits of his or their juriſdiction, may, by warrant under his hand and ſeal, or their hands and ſeals, commit any perſon or perſons ſo refuſing to be examined to the public priſon of the county, riding, diviſion, city, liberty,

and on their nonappearance, without cauſe ſhewn, or refuſal, warrants ſhall be iſſued againſt them;

and on their refuſing to be examined,

may be committed for any time not exceed- ing 14 days, nor leſs than 3.

liberty, or place, in which the perſon or perſons ſo refuſing to be examined ſhall be, there to remain for any time not exceeding fourteen days, nor leſs than three days, as any ſuch juſtice or juſtices ſhall direct.

Offender eſcaping out of the juriſdiction of the juſtice granting a warrant againſt him, the juſtice for the county where he ſhall eſcape to, may back ſuch warrant, proof being made of the original ſigning thereof; and may hear and determine the matter of complaint, as if it had originally aroſe within his juriſdiction;

29. And be it alſo enacted by the authority aforeſaid, That in caſe any perſon, againſt whom a warrant ſhall be iſſued by any juſtice or juſtices of the peace for any offence againſt this act, ſhall go into, reſide, or be, in any other county, riding, diviſion, city, liberty, town, or place, out of the juriſdiction of the juſtice or juſtices who ſhall have granted any ſuch warrant or warrants as aforeſaid, it ſhall and may be lawful for any juſtice or juſtices of the peace of the county, riding, diviſion, city, liberty, town, or place, into which ſuch offender or offenders againſt this act ſhall go or be, to indorſe his or their name or names on ſuch warrant (proof being firſt made, on oath, of ſuch warrant having been ſigned by ſuch other juſtice or juſtices) and every warrant ſo indorſed ſhall be ſufficient authority to all perſons to execute ſuch warrant in ſuch other county, riding, diviſion, city, liberty, town, or place, out of the juriſdiction of the juſtice or juſtices who firſt granted ſuch warrant; and every ſuch juſtice and juſtices reſpectively, as the caſe ſhall happen, after indorſing any ſuch warrant as aforeſaid, may, on the offender or offenders therein named being apprehended and brought before any ſuch juſtice or juſtices within his or their reſpective juriſdictions, hear and determine the matter of the complaint contained

in every ſuch warrant, in the ſame manner as if ſuch complaint had originally aroſe within the juriſdiction of ſuch juſtice or juſtices who ſhall have ſo backed any ſuch warrant; or may direct the offender or offenders to be carried before a juſtice or juſtices within whoſe juriſdiction the offence was committed, there to be dealt with according to law.

or he may return the offender to his original county, to be dealt with according to law.

30. And be it further enacted by the authority aforeſaid, That one moiety of all money which ſhall be forfeited for any offence which ſhall be committed againſt this act (and not herein otherwiſe appropriated) ſhall, when recovered, go and be paid to the perſon or perſons who ſhall proſecute to conviction any ſuch offender or offenders, and the other moiety thereof ſhall go and be paid to the treaſurer of *Greenwich* hoſpital for the time being, for the benefit of the ſame hoſpital.

One moiety of all forfeitures, not otherwiſe appropriated, ſhall go to the proſecutor, and the other to Greenwich hoſpital.

31. Provided alſo, and be it further enacted, That it ſhall be lawful for any perſon or perſons who ſhall think him, her, or themſelves aggrieved by any order or determination of any juſtice or juſtices of the peace, upon account of any offence committed, or ſuppoſed to be committed, againſt this act, to appeal to the general or quarter ſeſſion of the peace which ſhall be held for the county, city, riding, diviſion, or place, where any ſuch offence ſhall have been committed, next after the conviction of any offender or offenders for any offence committed againſt this act; the perſon or perſons ſo appealing firſt giving ſecurity in double the ſum forfeited, before ſuch juſtice or juſtices, to proſecute ſuch appeal

Perſons aggrieved by the order or determination of any juſtice, may appeal to the next quarter ſeſſion, peal with effect, and to abide by the order or orders which ſhall be made on ſuch appeal, and giving eight days notice in writing of his, her, or their intention to appeal, to the party or parties on whoſe proſecution any ſuch conviction ſhall be made, if there ſhall be ſo many days within the time of ſuch conviction and ſuch general or quarter ſeſſion; and, if not, then the party or parties who ſhall deem him, her, or themſelves aggrieved by any ſuch conviction, ſhall and may be at liberty to appeal to the next general or quarter ſeſſion but one which ſhall be held next after any ſuch conviction for the county, city, or place, where any ſuch conviction ſhall be made; and the juſtices in their ſaid general or quarter ſeſſion are hereby authorized and required to hear and determine the matter of every ſuch appeal, and to make ſuch order therein, and to award ſuch coſts, as to them ſhall appear juſt, and to cauſe to be levied, under the order of any ſuch ſeſſion, the coſts which ſhall be awarded, together with ſuch money as any ſuch court of ſeſſion, on the hearing of any ſuch appeal, ſhall adjudge to be forfeited, by diſtreſs and ſale of the goods and chattels of the perſon or perſons who ſhall refuſe to pay ſuch coſts and money forfeited; and if ſufficient goods or chattels of any ſuch offender or offenders cannot be met with to ſatisfy ſuch coſts and money forfeited, then by diſtreſs and ſale of the goods and chattels of the perſon or perſons who ſhall have become ſurety or ſureties as aforeſaid for the party or parties who ſhall have ſo appealed.

giving 8 days notice to the parties, and ſecurity to proſecute ſuch appeal with effect; and if there be not time to give ſuch notice, appeal may then be made to the ſubſequent ſeſſion; and the juſtices are then to determine the ſame, and award coſts; to be levied, together with the money adjudged to be forfeited, by diſtreſs and ſale, on the party, if diſtreſs can be found, and if not, then on his ſecurity.

32. Provided likewiſe, and be it alſo enacted, That no order or proceedings to be made or had by or before any juſtice of the peace in relation to the premiſſes, ſhall be quaſhed or vacated for want of form only; and that the order, which ſhall be made in the premiſſes by the juſtices at their general or quarter ſeſſion of the peace as aforeſaid, ſhall be final; and that no proceedings of any ſuch juſtice or juſtices out of ſeſſion, or in their ſaid general or quarter ſeſſion, in purſuance of this act, ſhall be removeable by *certiorari*, letters of advocation or of ſuſpenſion, or otherwiſe.

No order or proceedings of juſtices may be vacated for want of form; or removed by certiorari, &c. nor order of the court of ſeſſion be appealed from.

33. And be it enacted by the authority aforeſaid, That if any action or ſuit ſhall be brought or commenced againſt any perſon or perſons, for any thing which ſhall be done in purſuance of this act, every ſuch action or ſuit ſhall be brought and commenced within the ſpace of ſix calendar months next after any ſuch cauſe of action ſhall have accrued, and not afterwards; and ſhall be brought, laid, and tried in the county, city, or place, in which the cauſe of action ſhall have ariſen, and not elſewhere; and that the defendant and defendants in every ſuch action and ſuit may plead the general iſſue, and give this act and the ſpecial matter in evidence, at any trial to be had thereupon, and that the ſame was done in purſuance and by the authority of this act: and if the ſame ſhall appear to have been ſo done, or if any ſuch action or ſuit ſhall not be commenced within the time before limited, or ſhall be laid or brought in any other

Limitation of actions.

General iſſue.

other county, city, or place, than where the cauſe of action ſhall have ariſen; then, and in any of ſuch caſes, the jury ſhall find a verdict for the defendant or defendants; and upon ſuch verdict, or if the plaintiff or plaintiffs in any ſuch action or ſuit ſhall become nonſuit, or diſcontinue his, her, or their action, after the defendant or defendants therein ſhall have appeared, or if, on any demurrer, judgment ſhall be given for the defendant or defendants; then, and in any of the ſaid caſes, every ſuch defendant or defendants ſhall have and recover treble coſts, and ſhall be intitled to purſue and take ſuch remedy for recovering of the ſame, as any defendant or defendants hath or have to recover his or their coſts in other caſes by law.

Treble coſts.

Proviſions in the act touching the ſale or buying of fiſh within the bills of mortality, and penalties for non-obſervance thereof, are extended to the pariſh of Saint Mary le bone in Middleſex.

34. And be it further enacted by the authority aforeſaid, That all the proviſions and regulations herein before contained and enacted, with reſpect to places within the weekly bills of mortality, touching the ſale or buying of fiſh, and all penalties for the non-obſervance thereof, ſhall extend, and be conſtrued to extend, to the pariſh of Saint *Mary le bone* in the ſaid county of *Middleſex*, and ſhall in like manner to all intents and purpoſes take place and be in force, with reſpect to the ſaid pariſh of Saint *Mary le bone*.

The prohibitory clauſes in this act againſt contracts, are not to extend to thoſe made,

35. Provided further, and it is hereby alſo enacted and declared by the authority aforeſaid, That nothing in this act contained ſhall extend, or be conſtrued to extend, to make void any contract already made, or to prevent any contract from being made, after the ſaid firſt

day of *May* one thouſand ſeven hundred and ſixty-two, by or with any perſon or perſons, in regard to ſalt or dried fiſh, oyſters, carp, or tench, or any of them.

or to be made, with regard to ſalt or dried fiſh, oyſters, carp or tench.

36. Provided always, and it is hereby further enacted and declared by the authority aforeſaid, That no juſtice or juſtices of the peace ſhall receive any information againſt any perſon or perſons, by reaſon of being a party to, or concerned in, any contract for buying up fiſh to be ſold again contrary to the intent of this act; but that all money which ſhall be payable or forfeited by reaſon of any ſuch contract being made or entered into, ſhall be recoverable only, together with double coſts of ſuit, by the perſon who ſhall inform and ſue for the ſame in one of his majeſty's courts of record at *Weſtminſter*, wherein no eſſoin, wager of law, or protection, ſhall be allowed; and one moiety of the money ſo forfeited ſhall, when recovered, go and be paid to the treaſurer of *Greenwich* hoſpital for the time being, for the benefit of the ſame hoſpital, and the other moiety thereof to the perſon or perſons who ſhall inform for and recover the ſame.

No information may be received by a juſtice againſt any perſon, for being concerned in any contract for buying up fiſh to be ſold again contrary to this act; but the penalty for entering into ſuch contract, ſhall be recoverable only, with double coſts, in one of the courts at Weſtminſter; one moiety to go to Greenwich hoſpital, and the other to the proſecutor.

Laws

Laws of the Game. *(Game in general and Game-keepers.)*

Stat. 13 *Ric.* 2. *c.* 13.

None ſhall hunt but they which have a ſufficient living.

None ſhall hunt but they which have a ſufficient living.

FORASMUCH as divers artificers, labourers, and ſervants, and grooms, keep greyhounds and other dogs, and on the holydays when good chriſtian people be at church, hearing divine ſervice, they go hunting in parks, warrens, and conigries of lords and others, to the very great deſtruction of the ſame, and ſometime under ſuch colour they make their aſſemblies, conferences, and conſpiracies for to riſe and diſobey their allegiance: it is ordained and aſſented, that no manner of artificer, labourer, nor other layman, which hath not lands or tenements to the value of forty ſhillings by year, nor any prieſt, nor other clerk, if he be not advanced to the value of ten pounds by year, ſhall have or keep from henceforth any greyhound, hound, nor other dog to hunt; nor ſhall they uſe fyrets, hays, nets, harepipes, nor cords, nor other engines for to take or deſtroy deer, hares, nor conies, nor other gentlemens game, upon pain of one year's impriſonment; and that the juſtices of peace have power to enquire, and ſhall enquire of the offenders in this

Juſtices of peace ſhall enquire of, and puniſh the offenders.

this behalf, and puniſh them by the pain aforeſaid. *St.* 19 *H.* 7. 11. *Raſt. pla.* 405.

Stat. 33 *Hen.* 8. *c.* 6.

Inconveniencies enſuing the uſe of croſs-bows and hand-guns.

WHERE in the parliament holden at *Weſtminſter*, the fifteenth day of *January* in the five and twentieth year of the king's moſt gracious reign, and there continued and kept until the thirtieth day of *March* then next enſuing, among divers and ſundry wholſom and laudable acts, ſtatutes, and ordinances, one ſtatute and ordinance was made and ordained for the avoiding and eſchewing of ſhooting in croſs-bows and hand-guns: ſince the making of which act, divers malicious and evil diſpoſed perſons, not only preſuming wilfully and obſtinately the violation and breach of the ſaid act, but alſo of their malicious and evil diſpoſed minds and purpoſes have wilfully and ſhamefully committed, perpetrated and done divers deteſtable and ſhameful murders, robberies, felonies, riots and routs, with croſs-bows, little ſhort hand-guns, and little hag-buts, to the great peril and continual fear and danger of the king's moſt loving ſubjects, and alſo divers keepers of foreſts, chaſes, and parks, as well of our ſaid ſovereign lord, as others his nobles and commons; and divers gentlemen, yeomen, and ſervingmen now of late have laid apart the good and laudable exerciſe of the long-bow, which always heretofore hath been the ſurety, ſafeguard, and continual defence of this realm of *England*, and an ineſtimable dread and terror to the enemies of the ſame. And now of late the ſaid evil diſpoſed perſons have uſed, and yet do daily uſe to ride and go in the king's highways, and elſewhere, having with them croſs-bows, and little hand-guns, ready furniſhed with quarrels, gunpowder, fire and touch, to the great peril and fear of the king's moſt loving ſubjects. For reformation whereof, be it enacted, ordained, and eſtabliſhed by the king our ſovereign lord, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, in manner and form following, that is to ſay, That no perſon or perſons, of what eſtate or degree he or they be, except he or they in their own right, or in the right of his or their wives, to his or their own uſes, or any other to the uſe of any ſuch perſon or perſons, have lands, tenements, fees, annuities, or offices, to the yearly value of one hundred pounds, from or after the laſt day of *June* next coming, ſhall ſhoot in any croſs-bow, hand-gun, hagbut, or demy-hake, or uſe to keep in his or their houſes, or elſewhere, any croſs-bow, hand-gun, hagbut, or demy-hake, otherwiſe, or in any other manner than is hereafter in this preſent act declared; upon pain to forfeit, for every time that he or they ſo offend contrary to this act, ten pounds.

Who may keep or ſhoot in a gun or croſs-bow, and who not. Stat. 2 & 3 E. 6. 4.

7. And furthermore, be it enacted by the authority aforeſaid, That no perſon or perſons, of what eſtate or degree ſoever he or they be, from or after the ſaid laſt day of *June*

Of what length a hand gun, hagbut, and demy hake ſhall be.

June ſhall ſhoot in, carry, keep, uſe or have in his houſe, or elſewhere, any hand-gun, other than ſuch as ſhall be in the ſtock and gun of the length of one whole yard; or any hagbut or demy-hake, other than ſuch as ſhall be in the ſtock and gun of the length of three quarters of one yard; upon pain to forfeit, for every time that he or they ſhall ſhoot in, carry, uſe or have any ſuch gun, being not of the length of one whole yard, or hagbut, or demy-hake, being not of the length of three quarters of a yard, ten pounds ſterling. And that it may be lawful to every perſon and perſons which have lands, tenements, fees, annuities, or offices, to the yearly value of one hundred pounds, as is aforeſaid, to ſeize and take every ſuch croſs-bow, and alſo every hand-gun being in ſtock and gun ſhorter in length than one whole yard, and every hagbut and demy-hake being ſhorter in length than three quarters of a yard, or any of them, from the keeping or poſſeſſing of every ſuch offender contrary to the form of this act; and the ſame croſs-bow or croſs-bows to keep and retain to his or their own uſe; and alſo the ſame hand-guns, hagbuts, and demy-hakes, ſo ſeized and taken, within twenty days next after the ſame ſeizure, or taking, to break and deſtroy; upon pain of forty ſhillings for every gun ſo ſeized, and not broken and deſtroyed; and the ſame ſo broken and deſtroyed, to keep and retain to his or their own uſe.

He that hath C. li. by year, may take the croſs bow or gun from another.

8. And be it further enacted by the authority aforeſaid, That no perſon or perſons, other than

No perſon ſhall carry a gun charg'd.

than ſuch as have lands, tenements, rents, fees, annuities, or offices, to the yearly value of one hundred pounds, as is aforeſaid, from or after the ſaid laſt day of *June* ſhall carry or have in his or their journey, going or riding in the king's highways, or elſewhere, any croſs-bow bent, or gun charged or furniſhed with powder, fire, or touch for the ſame, except it be in time and ſervice of war; upon pain to forfeit for every ſuch offence ten pounds; this preſent act, or any thing therein contained to the contrary notwithſtanding.

Shooting in a market-town with a gun.

9. And be it further enacted by the authority aforeſaid, That no perſon or perſons, from the ſaid laſt day of *June*, ſhall in any wiſe ſhoot in or with any hand-gun, demy-hake, or hagbut, at any thing at large, within any city borough, or market-town, nor within one quarter of a mile of any city, borough, or market-town, except it be at a butt or bank of earth, in place convenient, or for the defence of his perſon or houſe; upon pain to forfeit for every ſuch ſhoot, ten pounds; this preſent act, or any thing therein contained to the contrary notwithſtanding.

No man ſhall command his ſervant to ſhoot.

10. And be it further enacted by the authority aforeſaid, That no perſon or perſons, of what eſtate or degree ſoever he or they be, ſhall, from or after the ſaid laſt day of *June*, command any of his or their ſervants to ſhoot in any croſs-bow, hand-gun, hagbut, or demy-hake of his or their ſaid maſters, or of any other perſons, at any deer, fowl, or

other thing, except it be only at a butt or bank of earth, or in the time of war, as is aboveſaid, upon pain to forfeit for every ſuch offence ten pounds. The one moiety of all which forfeitures and penalties in this preſent act above ſpecified, ſhall be to the king our ſovereign lord, his heirs and ſucceſſors, and the other moiety thereof to the party that will ſue for the ſame by bill, plaint, action of debt, or information, in any of the king's courts of record, in which ſuit no eſſoin, protection, nor wager of law ſhall be allowed.

Shooting at a butt or bank of earth.

II. Provided alway, and be it enacted by the authority aforeſaid, That it ſhall be lawful from henceforth to all gentlemen, yeomen, and ſervingmen of every lord ſpiritual and temporal, and of all knights, eſquires, and gentleman, and to all inhabitants of cities, boroughs, and market-towns of this realm of *England*, to ſhoot with any hand-gun, demy-hake, or hagbut, at any butt or bank of earth, only in place convenient for the ſame, ſo that every ſuch hand-gun, demy-hake, and hagbut be of the ſeveral lengths aforeſaid, and not under. And that it ſhall be lawful to every of the ſaid lord and lords, knights, eſquires, and gentlemen, and the inhabitants of every city, borough, and market-town, to have and keep in every of their houſes any ſuch hand-gun or hand-guns of the length of one whole yard, or any hag-but, or demy-hake of the length of three quarters of a yard, as is aforeſaid, and not under, to the intent to uſe and ſhoot in the ſame at a butt

Who may keep in their houſes guns of a lawful length.

or bank of earth only, as is aboveſaid, whereby they and every of them, by the exerciſe thereof in form aboveſaid, may the better aid and aſſiſt to the defence of this realm, when need ſhall require; this preſent act, or any thing therein contained to the contrary notwithſtanding.

He that dwelleth in a houſe ſtanding two furlongs from a town.

12. And be it further enacted by the authority aforeſaid, That it ſhall be lawful to every perſon and perſons, which dwelleth and inhabiteth in any houſe ſtanding and being ſet diſtant two furlongs from any city, borough, or town, to keep and have in his ſaid houſe, for the only defence of the ſame, hand-guns, hagbuts, and demy-hakes, being of the ſeveral lengths aforeſaid, and not under, and to uſe and exerciſe to ſhoot in the ſame at any butt or bank of earth near to his houſe, and not otherwiſe; any thing contained in this act to the contrary notwithſtanding.

Stat. 22 & 23 *Car.* 2. *c.* 25.

An act for the preſervation of fiſhing in the river *Severn*.

Preamble.

WHEREAS divers diſorderly perſons, laying aſide their lawful trades and implements, do betake themſelves to the ſtealing, taking, and killing of conies, hares, pheaſants, partridges, and other game, intended to be preſerved by former laws, with guns, dogs, tramels, lowbels, hayes, and other nets, ſnares, harepipes, and other engines, to the great damage of this realm, and prejudice of noblemen, gentlemen, and lords of manors, and others, owners of warrens.

2. For remedy thereof, be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all lords of manors, or other royalties, not under the degree of an eſquire, may from henceforth by writing under their hands and ſeals authorize one or more gamekeeper or gamekeepers within their reſpective manors or royalties, who being thereunto ſo authorized, may take and ſeize all ſuch guns, bows, greyhounds, ſetting-dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hayes, or other nets, harepipes, ſnares, or other engines for the taking and killing of conies, hares, pheaſants, partridges, or other game, as within the precincts of ſuch reſpective manors ſhall be uſed by any perſon or perſons, who by this act are prohibited to keep or uſe the ſame: and moreover, That the ſaid gamekeeper or gamekeepers, or any other perſon or perſons (being thereunto authorized by warrant under the hand and ſeal of any juſtice of the peace of the ſame county, diviſion or place) may in the day-time ſearch the houſes, out-houſes, or other places of any ſuch perſon or perſons by this act prohibited to keep or uſe the ſame, as upon good ground ſhall be ſuſpected to have or keep in his or their cuſtody any

Who may appoint game-keepers.

What ſuch gamekeepers may ſeize.

Power to ſearch houſes.

any guns, bows, greyhounds, ſetting-dogs, ferrets, coney-dogs, or other dogs to deſtroy hares or conies, hayes, tramels, or other nets, lowbels, harepipes, ſnares, or other engines aforeſaid, and the ſame, and every or any of them to ſeize, detain and keep, to and for the uſe of the lord of the manor or royalty where the ſame ſhall be ſo found or taken, or otherwiſe to cut in pieces or deſtroy, as things by this act prohibited to be kept by perſons of their degree.

What perſons are prohibited the keeping of guns, bows, dogs, &c.

3. And it is hereby enacted and declared, That all and every perſon and perſons not having lands and tenements, or ſome other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of one hundred pounds *per annum*, or for term of life, or having leaſe or leaſes of ninety-nine years, or for any longer term, of the clear yearly value of one hundred and fifty pounds, other than the ſon and heir apparent of an eſquire, or other perſon of higher degree; and the owners and keepers of foreſts, parks, chaſes, or warrens, being ſtocked with deer or conies for their neceſſary uſe, in reſpect of the ſaid foreſts, parks, chaſes, or warrens, are hereby declared to be perſons by the laws of this realm not allowed to have or keep for themſelves, or any other perſon or perſons, any guns, bows, greyhounds, ſetting-dogs, ferrets, cony-dogs, lurchers, hayes, nets, lowbels, harepipes, guns, ſnares, or other engines aforeſaid, but ſhall be, and are hereby prohibited, to have, keep, or uſe the ſame.

Stat.

Stat. 4 & 5 *Gul. & Mar. c.* 23.

An act for the more eaſy diſcovery and conviction of ſuch as ſhall deſtroy the game of this kingdom.

Preamble.

WHEREAS divers good and neceſſary laws have been heretofore made for the better preſervation of the game, notwithſtanding which laws, or for want of the due execution thereof, the game of this kingdom hath been very much deſtroyed by many idle perſons, who afterwards betake themſelves to robberies, burglaries, or other like offences, and neglect their lawful employments.

Laws againſt deſtroying the game not hereby repealed to be executed.

2. For remedy whereof, and the more effectual preſervation of the game, be it enacted by the king and queen's moſt excellent majeſties, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every law and ſtatute now in force for the better preſervation of the game, and every article and thing in them contained, and not herein and hereby altered or repealed, ſhall be duly put in execution, according to the tenor of the ſaid laws, and under the penalties therein contained, to be raiſed, levied, and diſpoſed of, as in and by the ſaid laws are directed.

Conſtable by warrant from a juſtice may

3. And be it further enacted by the authority aforeſaid, That for the more eaſy conviction

ſearch houſes of ſuſpected perſons, 3 & 4 W. & M. c. 10.

viction of ſuch offenders, as by the ſaid laws are prohibited, every conſtable, headborough, and tythingman, being thereunto authorized by warrant of one or more juſtice of the peace, under his or their hands and ſeals, ſhall and may have full power and authority, and is hereby required to enter into and ſearch (in ſuch manner, and with ſuch power, as in and by *An act for the more effectual diſcovery and puniſhment of deer ſtealers*, made in the third and fourth years of their preſent majeſties reign is provided, in caſe of veniſon or ſkin of any deer or toyles) the houſe or houſes, outhouſes, or other places belonging to ſuch houſes of ſuſpected perſons, not qualified as aforeſaid: and in caſe any hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game (upon ſuch ſearch, or otherwiſe) be found, the offender ſhall be carried before ſome juſtice of peace of the ſame county, riding, or diviſion; and if ſuch perſon do not give a good account how he came by ſuch hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time, to be ſet by the ſaid juſtice, produce the perſon of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof, That then ſuch perſon not giving ſuch good account, nor producing any ſuch witneſs, as aforeſaid, ſhall be convicted by the ſaid juſtice of ſuch offence, and upon ſuch conviction ſhall forfeit for every hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game, any ſum not under five ſhillings,

If hare, &c. be found, and owner cannot give good account, he ſhall be convicted by a juſtice.

Penalty upon conviction,

lings, and not exceeding the ſum of twenty ſhillings, to be aſcertained by the ſaid juſtice; one moiety thereof to be paid to the informer, and the other moiety to the poor of the pariſh where the offence was committed; the ſame to be levied by diſtreſs and ſale of the offender's goods, by warrant under the hand and ſeal of the juſtice before whom the offender ſhall be convicted, rendring the overplus, if any be; and for want of diſtreſs, the offender or offenders ſhall be committed to the houſe of correction, for any time not exceeding one month, and not leſs than ten days, there to be whipt and kept to hard labour; and in caſe any perſon or perſons, not qualified by the laws of this realm ſo to do, ſhall have, keep, or uſe any bows, greyhounds, ſetting-dogs, ferrets, coney-dogs, hayes, lurchers, nets, tunnels, lowbels, harepipes, ſnares, or any other inſtruments for deſtruction of fiſh, fowl, or other game, and ſhall be thereof convicted upon ſuch evidence, as aforeſaid, the perſon or perſons ſo convicted ſhall forfeit and be ſubject to the ſame pains and penalties, as are hereby directed to be inflicted upon the perſon or perſons, who ſhall be found to have any hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game, as aforeſaid; and if any perſon or perſons ſo produced or charged with the ſaid offence, ſhall not before the ſame juſtice give ſuch evidence of his innocence, as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon or perſons firſt charged therewith is hereby directed to be, and ſo from perſon

and manner of levying.

Perſons having greyhounds, &c. how convicted and puniſhed.

perſon to perſon, until the firſt offender ſhall be diſcovered.

Gamekeepers may oppoſe perſons in the night. 22 & 23 Car. 2. c. 25.

4. And to the end all keepers and gamekeepers mentioned in and duly authorized according to, the act made in the reign of the late king *Charles* the ſecond, may be indemnified in the execution of the ſaid office, Be it enacted, that all lords of manors or other royalties, or any perſon or perſons authorized by them as gamekeepers, ſhall and may, within the reſpective manors or royalties, oppoſe and reſiſt ſuch offender in the night-time, in the ſame manner, and be equally indemnified for ſo doing, as if ſuch fact had been committed within any ancient chaſe, park, or warren incloſed whatſoever.

Stat. 5 *Ann.* c. 14.

An act for the better preſervation of the game.

Preamble.

WHEREAS ſeveral laws have already been enacted for the better preſervation of the game, and by experience been found not ſufficient to prevent deſtroying the game, by reaſon of the multitude of higlars and other chapmen, which give great encouragement to idle, looſe perſons to neglect their lawful employments to follow and deſtroy the ſame; for remedy whereof, and the more effectual preſervation of the game, Be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every of the laws now in being for the better preſervation of the game, ſhall continue, remain, and be in the ſame force, not hereby repealed and altered.

All laws for preſervation of the game to continue in force, &c.

2. And be it further enacted by the authority aforeſaid, That if any higlar, chapman, carrier, inn-keeper, victualler, or alehouſe-keeper, ſhall, from and after the firſt day of *May* one thouſand ſeven hundred and ſeven, have in his or their cuſtody or poſſeſſion any hare, pheaſant, partridge, moor, heath-game, or grouſe, or ſhall buy, ſell, or offer to ſell, any hare, pheaſant, partridge, moor, heath-game, or grouſe; every ſuch higlar, chapman, inn-keeper, victualler, alehouſe-keeper, or carrier (unleſs ſuch game in the hands of ſuch carrier be ſent up by perſon or perſons qualified to kill the game) ſhall upon every ſuch offence be carried before ſome juſtice of the peace for the county, riding, city, or town corporate, or liberties where the ſaid offence is committed; and upon view, or upon the oath of one or more credible witneſſes, ſhall be convicted of the ſame, ſhall forfeit for every hare, pheaſant, partridge, moor, heath-game, or grouſe, the ſum of five pounds, one half to the informer, and the other half to the poor of the pariſh where the offence was committed; the ſame to be levied by diſtreſs and ſale of the offender's goods, by warrant under the hand and ſeal of the juſtice or juſtices of the peace before whom ſuch of-

Higlar, carrier, &c. not to have in his cuſtody any hare, pheaſant, partridge, &c. or buy or ſell hare, &c. on penalty of 5l.

to be levied by diſtreſs, &c.

fender

fender or offenders ſhall be convicted, rendring the overplus (if any be) the charge of diſtraining being firſt deducted; and for want of diſtreſs, the offender or offenders to be committed to the houſe of correction for the firſt offence, for the ſpace of three months, without bail or mainprize, and for every ſuch other offence, for the ſpace of four months; provided that ſuch conviction be made within three months after ſuch offence committed: and that if any *certiorari* ſhall be allowed to remove any conviction made, or other proceedings of or concerning any matter or thing in this act, into any of the courts at *Weſtminſter*, upon any pretence whatſoever, unleſs the party or parties, againſt whom ſuch conviction ſhall be made, ſhall before the allowance of ſuch *certiorari* become bound to the perſon or perſons proſecuting the ſame, in the ſum of fifty pounds, with ſuch ſufficient ſecurities, as the juſtice or juſtices of the peace, before whom ſuch offender ſhall be convicted, ſhall think fit, with condition to pay unto the proſecutors, within fourteen days after ſuch conviction or *procedendo* granted, their full coſts and charges, to be aſcertained upon their oaths; and that in default thereof it ſhall be lawful for the ſaid juſtice or juſtices, or others, to proceed for the due execution of ſuch conviction, in ſuch manner as if no ſuch *certiorari* had been awarded.

Encouragement to deſtroyers of the game, to make diſcoveries.

3. And for the better diſcovery of ſuch higlar, chapman, carrier, inn-keeper, alehouſe-keeper, and victualler, as ſhall offer to buy or ſell any hare, pheaſant, partridge, moor, heath-game,

or grouſe, Be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May*, any perſon that ſhall deſtroy, ſell, or buy any hare, pheaſant, moor, heath-game, or grouſe, and ſhall within three months make diſcovery of any higlar, chapman, carrier, inn-keeper, alehouſe-keeper, or victualler, that hath bought or ſold, or offered to buy or ſell, or had in their poſſeſſion any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſo as any one ſhall be convicted of ſuch offence, in manner as aforeſaid, ſuch diſcoverer to be diſcharged of the pains and penalties hereby enacted for killing or ſelling ſuch game, as aforeſaid, ſhall receive the ſame benefit or advantage as any other informer ſhall be intitled to by virtue of this act, for ſuch diſcovery and information.

Perſons not qualified to keep greyhounds, &c. and deſtroy the game, to forfeit 5 l.

4. And be it enacted by the authority aforeſaid, That if any perſon or perſons not qualified by the laws of this realm ſo to do, ſhall keep or uſe any greyhounds, ſetting-dogs, hays, lurchers, tunnels, or any other engine to kill and deſtroy the game, and ſhall be thereof convicted upon the oath of one or two credible witneſſes, by the juſtice or juſtices of the peace where ſuch offence is committed, as aforeſaid, the perſon or perſons ſo convicted ſhall forfeit the ſum of five pounds, one half to be paid to the informer, and the other half to the poor of the pariſh where the ſame was committed; the ſame to be levied by diſtreſs and ſale of the offender's goods, by warrant under the hand and ſeal of ſuch juſtice or juſtices, before whom ſuch perſon or perſons ſhall

to be levied by diſtreſs and ſale, &c.

be convicted, as aforeſaid; and for want of ſuch diſtreſs, the offender and offenders ſhall be ſent to the houſe of correction for the ſpace of three months for the firſt offence, and for every ſuch other offence, four months; and that it ſhall and may be lawful to and for any of her majeſty's juſtices of the peace, in their reſpective counties, ridings, cities, towns corporate, or liberty, and the lords and ladies of his, her, their or any of their reſpective manors, within the ſaid manors, to take away ſuch hare, pheaſant, partridge, moor, heath-game, or grouſe, or any other game, from any ſuch higlar, chapman, inn-keeper, victualler, or carrier, or any other perſon or perſons not qualified to kill the ſame, as ſhall be found in their cuſtody or poſſeſſion; and likewiſe to take away ſuch dogs, nets, or other engines, which ſhall be in the power or cuſtody of any perſon or perſons not qualified by the laws to keep the ſame, to their own proper uſe, without being accountable to any perſon or perſons for the ſame: and that it ſhall and may be lawful for any lord or lady of his or her reſpective lordſhip or manor, by writing under his or her hand and ſeal, to impower his or her gamekeeper or gamekeepers, upon his or her own lordſhip or manor, as aforeſaid, to kill hare, pheaſant, partridge, or any other game whatſoever; but if the ſaid gamekeeper ſhall, under colour or pretence of the ſaid power and authority to kill or take the ſame for the uſe of ſuch lord or lady, afterwards ſell or diſpoſe thereof to any perſon or perſons whatſoever, without the conſent or knowledge

Juſtices, or lords of manors, &c. may take away any hare, &c. from higlar, or perſon not qualified;

and alſo their dogs, nets, &c.

Penalty on gamekeeper, killing the game, and ſelling it without conſent of lord of manor, &c.

ledge of the lord or lady of ſuch manor or manors that hath given ſuch power or authority, in manner, as aforeſaid; and ſhall be thereof convicted upon the complaint of ſuch lord or lady of any manor, and upon the oath of one or more credible witneſſes, before any one or more of her majeſty's juſtices of the peace, as aforeſaid; upon ſuch conviction ſuch gamekeeper ſhall be committed to the houſe of correction for the ſpace of three months, and there to be kept to hard labour: and this act ſhall remain and be in force for the ſpace of three years, from the firſt day of *May* one thouſand ſeven hundred and ſeven, and from thence to the end of the next ſeſſions of parliament, and no longer. *Made perpetual by* 9 An. c. 25.

Stat. 9 *An. c.* 25.

An act for making the act of the fifth year of her majeſty's reign, for the better preſervation of the game, more effectual.

NO lord or lady of a manor ſhall make, conſtitute, or appoint, above one perſon to be a gamekeeper within any one manor, with power or authority to kill or deſtroy the game thereof; and that the name of ſuch perſon, ſo to be authorized to kill the game, ſhall, from time to time, be entered with the clerk of the peace for the time being, of the county, riding, or diviſion, wherein

Lords of manors ſhall appoint but one gamekeeper in one manor, whoſe name ſhall be entered with the clerk of the peace. Vid. 3 Geo. 1. c. 11.

in ſuch manor doth lie; ſuch entry to be made and viewed without fee or reward, and a certificate thereof to be granted by the clerk of the peace, upon payment of one ſhilling for the ſame; and in caſe any other gamekeeper, whoſe name ſhall not be ſo entred, as aforeſaid, who ſhall not be otherwiſe qualified by the laws of this kingdom to kill game, ſhall preſume to kill any hare, pheaſant, partridge, moor, heath-game, or grouſe; or if any gamekeeper or gamekeepers, or other perſon or perſons whatſoever, not being qualified in his own right to kill game, ſhall ſell, or expoſe to ſale, any hare, pheaſant, partridge, moor, heath-game, or grouſe; the reſpective offender or offenders herein ſhall, for every offence, incur ſuch forfeitures, pains and penalties, as are inflicted by the ſaid recited act upon higlars, carriers, inn-keepers, or victuallers, for buying or ſelling of game; ſuch forfeitures to be recovered by ſuch means, and in ſuch manner and form, and within ſuch time, and to ſuch uſes, as are preſcribed by the ſaid act; any thing in the ſaid recited act, or in any other law or ſtatute, to the contrary thereof in any wiſe notwithſtanding.

Gamekeepers not ſo qualified, or other unqualified perſon, killing or ſelling any hare, &c. to be liable to the forfeitures inflicted by the ſaid act on higlars, &c.

2. And be it further enacted by the authority aforeſaid, That if any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſhall be found in the ſhop, houſe, or poſſeſſion of any perſon or perſons whatſoever, not qualified in his own right to kill game, or being intitled thereto under ſome perſon ſo qualified, the ſame ſhall be adjudged, deemed, and taken

If any hare, &c. be found in the ſhop, &c. of any unqualified perſon, &c. it ſhall be judged an expoſing to ſale.

taken to be an expoſing thereof to ſale, within the true intent and meaning of this and the ſaid recited act; any thing in this or in the ſaid recited act contained to the contrary thereof in any wiſe notwithſtanding.

Killing any hare, &c. in the night, to incur the like forfeitures.

3. And be it further enacted by the authority aforeſaid, That if any perſon or perſons whatſoever ſhall take, kill, or deſtroy any hare, pheaſant, partridge, moor, heath-game, or grouſe, in the night-time, the perſon or perſons ſo offending ſhall likewiſe for every ſuch offence incur ſuch forfeitures, pains, and penalties, as aforeſaid, to be recovered likewiſe by ſuch means, within ſuch time, and to ſuch uſes, as aforeſaid.

No perſon ſhall, between 1 July and 1 September, take any wild duck, &c. by hayes, &c.

4. And whereas very great numbers of wild fowl of ſeveral kinds, are deſtroyed by the pernicious practice of driving and taking them with hayes, tunnels, and other nets, in lakes, and broad waters, where fowl reſort in the moulting-time, and that at the ſeaſon of the year, when the fowl are ſick, and moulting their feathers, and the fleſh unſavory and unwholſome, to the prejudice of thoſe that buy them, and to the great damage and decay of the breed of wild fowl; Be it therefore further enacted by the authority aforeſaid, That if any perſon or perſons whatſoever, between the firſt day of *July* and the firſt day of *September*, as they ſhall yearly happen, ſhall by hayes, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other fowl, commonly reputed water fowl, in any of the fens, lakes, broad waters, or other places

of reſort for wild fowl, in the moulting ſeaſon, ſuch perſon or perſons, who ſhall ſo offend, and thereof ſhall be convicted before any one or more of her majeſty's juſtices of the peace for the county where ſuch offence ſhall be committed, by the oath of one or more credible witneſs, ſhall for every wild duck, teal, or other water fowl, ſo taken as aforeſaid, forfeit and pay the ſum of five ſhillings; one moiety thereof to be paid to the informer, and the other moiety to the poor of the pariſh where ſuch offence ſhall be committed; the ſame to be levied by diſtreſs and ſale of the offender's goods, by warrant under the hand and ſeal of the juſtice and juſtices of the peace, before whom the offender ſhall be convicted, rendring the overplus, if any be, above the penalty and charge of diſtreſs; and for want of diſtreſs the offender or offenders ſhall be committed to the houſe of correction for any time not exceeding one month, nor leſs than fourteen days, there to be whipt, and kept to hard labour; and the juſtice or juſtices of the peace, before whom ſuch perſon or perſons ſo offending ſhall be convicted, ſhall order ſuch hayes, nets, or tunnels, that were uſed in driving and taking the ſaid wild fowl, as aforeſaid, to be ſeized and immediately deſtroyed, in the preſence of ſuch juſtice or juſtices.

on forfeiture of 5 s. for each wild fowl, &c. one moiety to the informer, the other to the poor, to be levied by diſtreſs, for want of which the offender to be committed.

Such hayes, &c. to be deſtroyed.

Stat. 3 *Geo.* 1. *c.* 11.

An act to explain and amend ſeveral laws therein mentioned, for the better preſervation of the game.

WHEREAS by an act made in the fifth year of the reign of her late majeſty queen *Anne*, intituled, *An act for the better preſervation of the game*, it is enacted, That it ſhall and may be lawful for any lord or lady of his or her reſpective lordſhip or manor, by writing under his or her hand and ſeal, to impower his or her gamekeeper, or gamekeepers, upon his or her own lordſhip or manor, to kill hare, pheaſant, partridge, or any other game whatſoever; which power of appointing ſeveral gamekeepers in the ſame manor, with power to kill game, was found by experience to tend very much to the deſtruction of the game of this kingdom: for the preventing whereof, by one other act of the ninth year of the reign of the ſaid late queen *Anne*, intituled, *An act for making the act of the fifth year of her majeſty's reign, for the better preſervation of the game perpetual, and for making the ſame more effectual*, it was enacted, That no lord or lady of any manor ſhall make, conſtitute, or appoint, above one perſon to be a gamekeeper within any one manor, with power or authority to kill or deſtroy the game thereof; and that the name of ſuch perſon, ſo to be authorized to kill the game,

Recital of the acts 5 A. ſeſſ. 2. c. 14, and

9 A. c. 23.

game, ſhall from time to time be entered with the clerk of the peace of the county, riding, or diviſion, wherein ſuch manor does lie; which power of appointing gamekeeper ſo to be entered, as aforeſaid, was manifeſtly deſigned to no other intent or purpoſe whatſoever, but that any lord or lady might appoint ſuch perſon as he or ſhe ſhould think proper to kill the game upon his or her own lordſhip or manor, for the ſole and proper uſe of the ſaid lord or lady; ſuch gamekeeper being expreſly reſtrained by the ſaid firſt recited act from ſelling or diſpoſing of any game to any perſon or perſons whatſoever, without the conſent or knowledge of the ſaid lord or lady of ſuch manor or manors that had given ſuch power and authority, as aforeſaid: and whereas, under colour and pretence of the ſaid power and authority to kill or take game for the uſe of the lord or ladies of any manor, it is become uſual and frequent in ſeveral parts of the kingdom, for lords and ladies of manors to grant powers and deputations to the farmers, tenants, and occupiers of the lands and eſtates lying within the precincts of their reſpective manors, to be gamekeepers, with power to kill and deſtroy the game; which practice is a very great abuſe of the powers intended by the ſaid acts to be granted, and manifeſtly tends very much to the deſtruction of the game of this kingdom: for remedy whereof be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the tenth day of *July* one thouſand ſeven hundred and ſeventeen, no lord or lady of any manor ſhall make, conſtitute, or appoint any perſon to be a gamekeeper, with power and authority to take and kill hare, pheaſant, partridge, or any other game whatſoever, unleſs ſuch perſon be qualified by the laws of this realm ſo to do, or unleſs ſuch perſon be truly and properly a ſervant to the ſaid lord or lady, or ſuch perſon be immediately employed and appointed to take and kill the game for the ſole uſe or benefit of the ſaid lord or lady, and not otherwiſe; and that no lord or lady of any manor ſhall authorize or qualify any perſon or perſons whatſoever, not being qualified by the laws of this realm ſo to do, to take or kill any hare, pheaſant, partridge, or other game whatſoever, or to keep or uſe any greyhound, ſetting-dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and deſtroy the game; and that any perſon or perſons whatſoever, not being qualified by the laws ſo to do, or not being truly and properly a ſervant of any lord or lady of a manor, or not immediately employed and appointed to take and kill the game for the ſole uſe or immediate benefit of the ſaid lord or lady, who, under colour, or pretence of any power or authority, deputation, or qualification to him granted by any lord or lady of a manor, ſhall take or kill any hare, pheaſant, partridge, or other game whatſoever, or ſhall keep or uſe any greyhounds, ſetting-dogs, hays,

After July 10, 1717, no lord of a manor ſhall appoint any gamekeeper with power to kill the game, except he be qualified ſo to do, or be a ſervant,

Nor to keep any greyhounds, &c.

Unqualified perſons killing the game, ſhall be liable to the forfeitures of the recited acts.

hays, lurchers, guns, tunnels, or any other engine, to kill and deſtroy the game, being thereof legally convicted, ſhall, for every ſuch offence, incur ſuch forfeitures, pains, and penalties, as are appointed to be inflicted by the ſaid recited acts of the fifth and ninth years of the reign of the late queen *Anne*; ſuch forfeitures to be recovered by ſuch means, and in ſuch manner and form, and within ſuch time, and to ſuch uſes, as are preſcribed by the ſaid recited acts; any thing in the ſaid acts or in any other law or ſtatute to the contrary thereof in any wiſe notwithſtanding.

The recited acts ſhall remain in force.

2. And be it further enacted by the authority aforeſaid, That the ſaid recited acts, of the fifth and ninth years of the reign of her ſaid late majeſty queen *Anne*, and all other laws now in force for the better preſervation of the game, and all matters, powers, and things therein contained (not hereby altered and repealed) ſhall continue, remain, and be in full force.

Any perſon may ſue for penalties for offences againſt the laws of the game.

Stat. 8 *Geo.* 1. *c.* 19. *ſect.* 1. Where any perſon ſhall, for any offence againſt any law in being for preſervation of the game, be liable to pay any pecuniary penalty upon conviction before any juſtice of peace, it ſhall be lawful for any other perſon either to proceed to recover the ſaid penalty by information before a juſtice, or to ſue for the ſame by action of debt, or on the caſe, bill, plaint or information, in any court of record at *Weſtminſter*,

ſter, and the plaintiff, if he recovers, ſhall have double coſts.

2. Provided that all ſuits to be brought by force of this act, ſhall be brought before the end of the *next* term [by *ſtat.* 26 *Geo.* 2. *c.* 2. action muſt be brought before the end of the *ſecond* term] after the offence committed; and that no offender ſhall be proſecuted for the ſame offence both by the way preſcribed by this law, and by the way preſcribed by any of the former laws; and that in caſe of any ſecond proſecution, the perſon ſo doubly proſecuted may plead in his defence the former proſecution pending, or the conviction or judgment thereupon.

Stat. 2 *Geo.* 3. *c.* 19.

An act for the better preſervation of the game in that part of *Great Britain* called *England*.

Preamble. After 1 June 1762, no perſon may take, kill, buy, or ſell, or have in his cuſtody, any partridge, between 12 Feb. and 1 Sep. or pheaſant, between 1 Feb. and 1 Oct. or

FOR *the better preſervation of the game in this kingdom, may it pleaſe your moſt excellent majeſty, that it may be enacted*; and be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no perſon or perſons, after the firſt day of *June* one thouſand ſeven hundred and ſixty-two, ſhall, upon any pretence whatſoever, take, kill, deſtroy, carry, ſell, buy, or have in his, her, or their poſ-

ſeſſion

heath fowl, between 1 Jan. and 20 Aug. or grouſe, between 1 Dec. and 25 July, in any year;

ſeſſion, or uſe any partridge, between the twelfth day of *February* and the firſt day of *September* in any year; or any pheaſant between the firſt day of *February* and the firſt day of *October* in any year; or any heath fowl, commonly called *Black Game*, between the firſt day of *January* and the twentieth day of *Auguſt* in any year; or any grouſe, commonly called *Red Game*, between the firſt day of *December* and the twenty-fifth day of *July* in any year.

Pheaſants taken in the proper ſeaſon, and kept in mews, or breeding places, excepted.

2. Provided always, That nothing in this act ſhall extend to any pheaſant which ſhall be taken in the ſeaſon allowed by this act, and kept in any mew or breeding-place.

This act not to extend to Scotland.

3. Provided alſo, That nothing in this act contained ſhall extend, or be conſtrued to extend, to that part of *Great Britain* called *Scotland*.

Perſons offending in any of the caſes aforeſaid, forfeit 5 l. per bird, to the proſecutor,

4. And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall tranſgreſs this act in any of the aforeſaid caſes, and ſhall be lawfully convicted thereof by the oath of one or more credible witneſs or witneſſes, every ſuch perſon ſhall, for every partridge, pheaſant, heath fowl, or grouſe, ſo taken, killed, deſtroyed, carried, ſold, bought, or found in his, her, or their poſſeſſion or uſe, contrary to the true intent and meaning of this act, forfeit and pay the ſum of five pounds to the perſon or perſons who ſhall inform or ſue for the ſame: and it ſhall and may be lawful to and for any perſon or perſons to ſue and proſecute for, and recover,

the ſaid penalty of five pounds, with full coſts of ſuit, by action of debt, bill, plaint, or information, in any of his majeſty's courts of record at *Weſtminſter*; and in ſuch action or ſuit, no eſſoin, wager of law, or more than one imparlance, ſhall be allowed.

to be recovered, with full coſts, in any of the courts at Weſtminſter.

5. And whereas by an act paſſed in the eighth year of the reign of his late majeſty king *George* the firſt, intituled, *An act for the better recovery of the penalties inflicted upon perſons who deſtroy the game*; it was enacted, That whereſoever any perſon ſhall, for any offence to be hereafter committed againſt any law now in being for the better preſervation of the game, be liable or ſubject to any pecuniary penalty or ſum of money, upon conviction before any juſtice or juſtices of the peace, it ſhall and may be lawful for any other perſon whatſoever, either to proceed to recover the ſaid penalty by information and conviction before a juſtice or juſtices of the peace, in ſuch manner as is in ſuch law contained, or to ſue for the ſame by action of debt, or on the caſe, bill, plaint, or information, in any of his majeſty's courts of record: and whereas, a moiety or portion of the ſaid pecuniary penalty is, by ſeveral acts of parliament, directed to be applied to and for the uſe of the poor of the pariſh wherein ſuch offence ſhall be committed, by reaſon whereof inhabitants of the ſaid pariſh have been diſallowed to give evidence touching ſuch offences: and whereas ſuits by action of debt, or on the caſe, bill, plaint, or information, are often attended with great coſts and charges to the

Recital of clauſe in act 8 Geo. 1.

The whole of the pecuniary penalties under the ſaid act, may be ſued for, and recovered to the ſole uſe of the proſecutor, with double coſts;

proſecutor, by means whereof the end or intentions of the ſaid act have been, in a great meaſure, fruſtrated; for remedy whereof be it enacted by the authority aforeſaid, That from and after the paſſing of this act, it ſhall and may be lawful for any perſon whatſoever, to ſue for and recover the whole of ſuch penalty for his own uſe, by action of debt or on the caſe, bill, plaint, or information, in any of his majeſty's courts of record at *Weſtminſter*, wherein no eſſoin, wager of law, or more than one imparlance, ſhall be allowed; and wherein the plaintiff, if he recovers, ſhall have his double coſts; and that no part of the ſaid penalty, recovered in any ſuch ſuit or action, ſhall be paid, or applied to or for the uſe of the poor of the pariſh wherein ſuch offence ſhall be committed; any law or uſage to the contrary notwithſtanding.

and no part thereof to go to the uſe of the poor of the pariſh.

Proſecutions to be within 6 months after the fact committed.

6. Provided always, and be it enacted, That no ſuch action, ſuit, bill, plaint, or information, ſhall be brought or exhibited, but within the ſpace of ſix months next after the matter or thing done, for which the ſame ſhall be commenced or exhibited as aforeſaid.

(Grouſe

(*Grouſe or Moor-game.*)

Stat. 1 *Jac.* 1. *c.* 27. *ſect.* 2. See this ſtatute under the title *Hares.*

STAT. 4 & 5 *Will.* 3. *c.* 23. *ſect.* 11. For the better preſerving the red and black game of grouſe commonly called heath-cocks, or heath-polts, no perſon whatſoever on any mountains, hills, heaths, moors, foreſt, chaſes, or other waſtes, ſhall preſume to burn between *February* ſecond and *June* twenty-fourth, any grig, ling, heath, furz, goſs, or fern; on pain of being committed to the houſe of correction for any time not exceeding one month, nor leſs than ten days, there to be whipt and kept to hard labour.

Stat. 9 *Ann.* *c.* 25. *ſect.* 3. If any perſon whatſoever ſhall take or kill any moor, heath-game, or grouſe, in the night-time, he ſhall, on conviction before one juſtice, on oath of one witneſs, forfeit five pounds, half to the informer, and half to the poor, by diſtreſs; and for want of diſtreſs, to be ſent to the houſe of correction three months for the firſt offence, and for every other offence four months.

Laws of the Game. (*Hares.*)

Stat. 14 & 15 *Hen.* 8. *c.* 10.

The penalty for killing of a hare in the ſnow.

FORASMUCH as our ſovereign lord the king, and other noblemen of this realm of *England*, before this time have uſed and exerciſed the game of hunting of the hare, for their diſport and pleaſure, which game is now decayed, and almoſt utterly deſtroyed, for that divers perſons in divers parts of this realm, by reaſon of the tracing in ſnow, have killed and deſtroyed, and daily do kill and deſtroy the ſame hares, by ten, twelve, or ſixteen upon a day, to the diſpleaſure of of our ſaid ſovereign lord the king, and other noblemen of this his realm: wherefore be it enacted by our ſaid ſovereign lord, by the lords ſpiritual and temporal, and by the commons, in this preſent parliament aſſembled, and by authority of the ſame, That no perſon or perſons of what eſtate, degree, or condition they be, from henceforth trace, deſtroy, and kill any hare in the ſnow with any dog, bitch, nor otherwiſe. And that the juſtices of the peace within every ſhire, at every ſeſſions of the peace, and ſtewards of leets, ſhall have full authority and power to inquire of ſuch offenders. And after ſuch inquiſitions found, the ſaid juſtices of the peace and ſtewards of leets, for every hare ſo killed, ſhall ceſs upon every ſuch offender ſix ſhillings eight pence, to be forfeited to our

Juſtices of peace and ſtewards in leets may inquire of and puniſh the offenders.

our ſaid ſovereign lord, that ſhall be ſo founden by the juſtices of peace in their ſeſſions, and the forfeiture found in every leet to be to the lord of the leet.

Stat. 1 *Jac.* 1. *c.* 27.

FORASMUCH as there be divers good and neceſſary laws and ſtatutes, which do inflict and impoſe divers great and heavy penalties, puniſhments and forfeitures upon ſuch as ſhould, with any guns, nets, croſsbows, or other inſtruments or engines, ſpoil or deſtroy the game of pheaſants, partridges, hearne, mallard, and ſuch like, and upon ſuch as kill or deſtroy hares with hare-pipes, cords, or other engines, or ſhould kill any hare by tracing and courſing them with dogs in the ſnow; and nevertheleſs of late years, the ſeveral games above-mentioned have been more exceſſively and outrageouſly ſpoiled and deſtroyed, than hath been in former ages, eſpecially by the vulgar ſort, and men of ſmall worth, making a trade and a living of the ſpoiling and deſtroying of the ſaid games, who are not of ſufficiency to pay the ſaid penalties in the ſaid ſtatutes mentioned, nor to anſwer the coſts and charges of any that ſhould inform and proſecute againſt them, in any of his ſaid majeſty's courts of record at *Weſtminſter*, upon any of the ſaid penal laws and ſtatutes; by reaſon whereof few ſuits have been attempted upon the ſaid laws, and for the ſaid forfeitures, whereby the good thereby meant and hoped hath not ſucceeded, and thereby great ſcarcity of the ſaid games in all or in the moſt parts of this realm hath followed, and preſently is, and ſo is like to be, if ſome remedy be not in that behalf provided.

The penalties for deſtroying a hare, or certain fowl, or their eggs.

2. Be it therefore enacted by the authority of this preſent parliament, That all and every perſon and perſons, which from and after the firſt day of *Auguſt* next following ſhall ſhoot at, kill, or deſtroy, with any gun, croſs-bow, ſtone-bow, or long-bow, any pheaſant, partridge, houſe-dove, or pigeon, hearne, mallard, duck, teale, widgeon, grouſe, heath-cock, moor-game, or any ſuch fowl, or any hare; or, after the firſt day of *Auguſt*, ſhall take, kill, or deſtroy any pheaſant, partridge, houſe-dove, or pigeon, with ſetting-dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever, or ſhall take the eggs of any pheaſant, partridge, or ſwans out of the neſts, or willingly break, ſpoil, or deſtroy the ſame in the neſt; or, after the ſaid firſt day of *Auguſt*, ſhall trace or courſe any hares in the ſnow, or at any time take or deſtroy any hares with any hare-pipes, cords, or with any ſuch inſtruments, or other engines; and the ſame offence or offences being proved by the confeſſion of the party, or by the teſtimony of two ſufficient witneſſes, upon oath before two or more juſtices of peace of the ſame county, city, or town corporate, wherein the offence ſhall be committed, or the party offending apprehended; ſhall be by the ſaid juſtices of peace for every ſuch offence committed to the common

gaol of the ſaid county, city, or town corporate, where the offence ſhall be committed, or the parties apprehended, there to remain for three months without bail or mainprize, unleſs that the ſaid offender do or ſhall forthwith, upon the ſaid conviction, pay, or cauſe to be paid, to the churchwardens of the ſaid pariſh, where the ſaid offence ſhall be committed, or the party apprehended, to the uſe of the poor of the ſaid pariſh, the ſum of twenty ſhillings for every pheaſant, partridge, houſe-dove, pigeon, hearne, mallard, duck, teale, widgeon, grouſe, heath-cock, moor-game, or any ſuch fowl; and for every egg of pheaſant, partridge, or ſwans, and for every hare, which any and every ſuch perſon and perſons ſo offending, and convicted, as aforeſaid, ſhall take, kill, or willingly deſtroy, contrary to the true purport, and true meaning of this ſtatute, or after one month after his commitment, together with two ſufficient ſureties, become bound by recognizance in the ſum of twenty pounds apiece to the king's majeſty's uſe, his heirs, and ſucceſſors, with condition that he the ſaid party, ſo offending, ſhall not at any time hereafter ſhoot at, kill, take, or deſtroy any of the ſaid games before mentioned, by any of the means aforeſaid: which ſaid recognizances ſhall be taken by any two or more juſtices of peace of the ſaid county, city, or town corporate, where the offender ſhall be ſo impriſoned, as aforeſaid, and ſhall be returned to the then next quarter-ſeſſions, and there to remain of record, as other recognizances taken for the peace.

The penalty for keeping of a greyhound or ſetting-dog, with nets, to take pheaſants, &c.

3. And for the better preſervation of deer, hares, and other the games aforeſaid, Be it further enacted by the authority aforeſaid, That all and every perſon and perſons, which from or after the ſaid firſt day of *Auguſt* ſhall have or keep any greyhound for courſing of deer or hare, or ſetting-dog or dogs, or net or nets, to take pheaſants or partridges (except ſuch perſon or perſons which ſhall be ſeiſed, in their own right, or in the right of their wives, of lands, tenements, or hereditaments, of the clear yearly value of ten pounds by the year, or more, over and above all charges and repriſes, of ſome eſtate of inheritance; or of lands, tenements, or hereditaments in his own right, or in the right of his wife, for term of life or lives, of the yearly value of thirty pounds, over and above all charges and repriſes; or be poſſeſt of goods or chattels to the full value of two hundred pounds to his own uſe; or be the ſon or ſons of any knight, or of any baron of parliament, or of ſome perſon of higher degree, or the ſon and heir apparent of any eſquire) and being thereof convicted, as aforeſaid, ſhall by the ſaid juſtices of the peace be committed and impriſoned in manner and form as in and by this preſent act before is expreſſed, ſpecified and declared: except ſuch perſon and perſons ſo offending, and thereof convicted, as aforeſaid, do forthwith pay or cauſe to be paid to the churchwardens of the ſaid pariſh, where the ſaid offence ſhall be committed or the party

apprehended, to the uſe of the poor of the ſaid pariſh, the ſum of forty ſhillings of good and lawful money of *England*.

The penalty for ſelling, or buying to ſell again, deer, hare, partridge, or pheaſant.

4. And be it further enacted by the authority aforeſaid, That every perſon and perſons, which, at any time after the ſaid firſt day of *Auguſt*, ſhall ſell, or buy to ſell again, any deer, hare, partridge or pheaſant (except partridges and pheaſants reared and brought up in houſe or houſes or brought from beyond the ſeas) ſhall forfeit for every deer ſo bought and ſold forty ſhillings, for every hare ten ſhillings, and for every partridge ten ſhillings, and for every pheaſant, ſo bought and ſold, twenty ſhillings. Of all which forfeitures the one moiety ſhall be to him that will ſue for the ſame by bill of indictment or information, and the other moiety to the poor of the pariſh where the ſaid offence or offences ſhall be committed.

No puniſhment by any former law, where it is inflicted by this.

5. And be it further enacted by the authority aforeſaid, That no perſon or perſons ſhall or may, after the ſaid firſt day of *Auguſt*, be puniſhed by force of any former ſtatute or law, for any of the ſaid offences, for which by force of this law any puniſhment ſhall be inflicted: and that all juſtices of aſſize in their ſeveral circuits, and all juſtices of the peace in their general quarter-ſeſſions, and any two juſtices of peace or more together out of any ſeſſions, ſhall and may, by force of this preſent act, have full power and authority to examine, hear, puniſh, and determine all offences to be committed againſt this preſent ſtatute, and to adminiſter oath, as aforeſaid,

and perform and execute all and every act and thing fit or requiſite for the true execution of this preſent act.

Licences to ſhoot in a hand-gun, &c. for hawks-meat.

6. And be it alſo further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for every perſon and perſons keeping any hawk or hawks, which at the general quarter-ſeſſions of the county (where he and they ſhall dwell) ſhall be licenſed to ſhoot hail-ſhot in hand-guns or birding pieces, at crow, chough, pye, rook, ring-dove, jay, or ſmaller birds, for hawks-meat only, to ſhoot and kill hawks-meat, according to the ſaid licence only, ſo that ſuch party ſo to be licenſed, do at the ſame quarter-ſeſſions wherein he ſhall be licenſed, become bound to the king's majeſty by recognizance in twenty pounds, not to ſhoot at any the fowl or game, of which ſhooting is prohibited by this law; and ſo that he or they ſhall not ſhoot in any hand-gun, or other gun, within ſix hundred paces of any hernery, nor within one hundred paces of any pigeon-houſe, nor in any park, foreſt, or chaſe, whereof the party ſo licenſed, or his maſter, is or ſhall not be the owner, keeper, or governor; for which licence and recognizance the clerk of the peace is to take only twelve pence, and no more.

Stat. 23 *Eliz. c.* 10. *ſect.* 5. If any manner of perſons ſhall hunt with ſpaniels in any ground where corn or other grain ſhall then grow (except in his own ground), at ſuch time as any eared corn or grain ſhall be growing thereon, and before it be ſhocked or cocked, and be thereof convicted at the aſſizes, ſeſſions, or leet, he ſhall forfeit forty ſhillings to the owner of the corn; and if not paid in ten days, he ſhall be impriſoned for one month. And any juſtice may examine the offender, and bind him over to appear at next ſeſſions to anſwer the offence, and to pay the penalty, or receive the puniſhment.

Stat. 22 & 23 *Car.* 2. *c.* 25. *ſect.* 6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares, harepipes, or other like engines, and ſhall be thereof convicted, by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; he ſhall give to the party injured ſuch damages, and in ſuch time, as the juſtice ſhall appoint, and ſhall pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding ten ſhillings, as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month.

Stat. 9 *Ann. c.* 25. *ſect.* 3. If any perſon whatſoever ſhall take or kill any hare in the night-time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit five pounds, half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months.

By the Black act, *viz.* 9 *Geo.* 1. *c.* 22. [which ſee at large under title *Deer*, p. 72] If any perſon armed and diſguiſed ſhall appear in any warren or place where hares are

uſually

uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for either of the ſaid offences, or preſume to join with him in any ſuch unlawful act; he ſhall be guilty of felony without benefit of clergy.

Laws of the Game. (*Hawks and Hawking.*)

Stat. 34 *Ed.* 3. *c.* 22.

In what ſort one man's hawks taken up by another ſhall be uſed.

IT is accorded in this preſent parliament, That every perſon which findeth a faulcon, tarcelet, laner or laneret, or other hawk that is loſt of their lord, that preſently he bring the ſame to the ſheriff of the county, and that the ſheriff make proclamation in all the good towns in the county, that he hath ſuch a hawk in his cuſtody. And if the lord which loſt the ſame, or any of his people come to challenge it, and proveth reaſonably that the ſame is his lord's, let him pay for the coſts, and have the hawk. And if none come within four months to challenge it, that then the ſheriff have the hawk, making gree to him that did take him, if he be a ſimple man; and if he be a gentleman and of eſtate to have the hawk, that then the ſheriff redeliver to him the hawk, taking of him reaſonable coſts for the time that he had him in his cuſtody. And if any man take ſuch hawk, and the ſame conceal from the lord, whoſe it was, or from his falkoners; or whoſoever taketh him from the lord, and thereof be attainted, ſhall have impriſonment of two years, and yield to the lord the price of the hawk ſo concealed and carried away, if he have whereof, and if not, he ſhall the longer abide in priſon.

Stat. 37 *Ed.* 3. *c.* 19.

How each perſon ſhall uſe a hawk of another man's that he taketh up.

WHEREAS it was another time ordained, That every perſon that findeth any falkon, tarcelet, laner, or laneret, or any other hawk that is loſt of his lords, that preſently he ſhall bring him to the ſheriff of that county, and that the ſheriff make proclamation in all the good towns of the county, that he hath ſuch hawk in keeping, and if the lord which hath loſt him, or any of his come to challenge him, and prove reaſonably that it is his lord's, let him pay for his coſts, and have the hawk; if none come within four months for to challenge him, then the ſheriff ſhall have the hawk, making gree to him that did take him, if he be a ſimple man, and if he be a gentleman, and of eſtate to have the hawk, the ſheriff ſhall redeliver to him the hawk, taking of him reaſonable coſts for the time that he had him in his keeping: and if he hath taken ſuch hawk, and the ſame conceal from the lord, to whom the hawk is, or from his faulkoners, or if any take him away from the lord, and thereof be attainted, he ſhall have two years impriſonment, and yield to the lord the price of the hawk ſo concealed or taken away, if he hath whereof, and if not, he ſhall the longer abide in priſon: notwithſtanding this ordinance, the offenders doubt but little to offend in this behalf: wherefore it is ordained, and by ſtatute eſtabliſhed in this preſent parliament, that if any ſteal any hawk, and the ſame carry away, not doing the ordinance aforeſaid, it ſhall be done of him as of a thief that ſtealeth a horſe or other thing.

The concealing or embezilling of a hawk is felony.

[*The following commentary upon this act is taken from the third part of Lord* Coke'*s Inſtitutes, pag.* 97, 98, 99.]

The ſtatute of 34 *Ed.* 3. inflicted the penalty for the concealing and taking away of the hawk, two year's impriſonment, and the price of the hawk to the lord, if he hath wherewith, and if not, he ſhall the longer abide in priſon. This act of 37 *Ed.* 3. maketh the offence felony.

Every perſon] This is a general law, and extendeth to all perſons of what degree or ſex ſoever. 3 *Inſt.* 98.

That findeth] Note, By the Common law, the felonious taking of any hawk long-winged, or ſhort-winged, from the peark, *&c.* or from the perſon of any man, with a mind to ſteal her, is robbery: but the finding of a faulcon, though he concealed, denied, or ſold her, was no felony, but by this act. 3 *Inſt.* 98.

Any faulcon] By this and the words, *or any other faulcon*, it appeareth that only faulcons are within this law; as, beſides thoſe that are here named, the gerfaulcon, *giroſalco*, or *ardearius*, and the *tercell*, which is called a jerkyn; and the lanner is called *falcunculus*. But the merlyn, which is called *æſalo*, and the hobby, which is called *alaudaria*, though they be long-winged hawks, yet being not of the kind of faulcons, they are not within this ſtatute; neither is any ſhort-winged hawk, as the goſhawk, the tercell of the goſhawk, or the ſpar-hawk, *&c.* as hath been ſaid, within this act. 3 *Inſt.* 98.

Tercelet] This is the tercell of the faulcon, called a tercel gentile, the male of the faulcon called *terciolus*, becauſe the tercell is a third part leſs than the female. 3 *Inſt.* 98.

Laner or laneret] Theſe (as hath been ſaid) are of the kind of faulcons, which appeareth not only by the name *falcunculus*, but by the words of the act, for having named the laner and laneret, it is ſaid, *or any other faulcon.* 3 Inſt. 98.

Although theſe hawks, that ſhall be ſo loſt, have no vervels, yet muſt the finder carry them to the ſheriff; for vervels are not required by this act. The only thing that the finder is to do, to ſave himſelf from felony, is forthwith, after his finding, to carry the hawk to the ſheriff. 3 *Inſt.* 98.

That is loſt of his lords] Lords are taken here for the owners. *Ib.*

And prove reaſonably] This is not intended according to the general ſenſe of the word *proof*, that is, by a jury of twelve men; but *reaſonably*, that is, by vervels, or by marks, or by other proof to the ſheriff. *Ib.*

And if any ſteal any hawk, &c.] The concealing and carrying away of the hawk, not bringing the ſame to the ſheriff according to this ordinance, is adjudged a ſtealing by this act. And yet if a man find goods, and conceal or deny them, it is no felony. 3 *Inſt.* 98.

As of a thief that ſtealeth a horſe] But yet by the Common law one hath not as good and abſolute a property in hawks, being *feræ naturæ*, and reclaimed for delight and pleaſure, (for they may become wild again and return to their natural liberty) as in a horſe, or any other thing of profit: but the concealing and carrying away of the hawk reclaimed, being found, was no felony before this ſtatute, no more than any thing of profit, becauſe the party came to the hawk by finding. A hawk that is not reclaimed is *nullius in bonis*, but *occupanti conceditur*, and he that firſt getteth the hawk enjoyeth it. *Ib.*

In this act three things are to be obſerved. Firſt, That the ſheriff muſt make proclamation in all the good towns of the county, that he hath ſuch a faulcon in keeping. Secondly, If none come to challenge the faulcon within four months, if the finder be under the degree of a gentleman (called in this act a ſimpleman) the ſheriff ſhall have the faulcon, paying reaſonable coſts, *&c.* Thirdly, If the finder be a gentleman, and no challenge by the owner within four months, then he ſhall have the faulcon, paying reaſonable coſts, *&c.*

For this offence of felony the offender ſhall have the benefit of his clergy; for at the time of the making of this act, he that had a ſtolen a horſe ſhould have had his clergy.

Stat. 5 *Eliz. c.* 21. *See this ſtatute in page* 151.

Stat. 11 *Hen.* 7. *c.* 17.

FORASMUCH as divers perſons, having little ſubſtance to live upon, uſe many times as well by nets, ſnares, or other engines, to take and deſtroy pheaſants and partridges, upon the lordſhips, manors, lands, and tenements of divers owners and poſſeſſioners of the ſame, without licence, conſent, or agreement of the ſame owners or poſſeſſioners, by which the ſame owners and poſſeſſioners leeſe not only their pleaſure and diſport that they, their friends, and ſervants ſhould have about hawking, hunting, and taking of the ſame, but alſo they leeſe the profit and avail that by that occaſion ſhould grow to their houſehold, to the great hurt of all lords and gentlemen, and other having any great livelihood within this realm. Wherefore it is ordained and enacted by the authority of this preſent parliament, That it ſhall not be lawful to any perſon, of what condition he be, to take or cauſe to be taken any pheaſants or partridges, by nets, ſnares, or other engines, out of his own warren, upon the freehold of any other perſon, without the aſſent, agreement, and ſpecial

Raſt. pla. f. 599. The penalty for taking of pheaſants or partridges in another's ground, by nets, &c. St. 23 El. 10. 1 Jac. 27. 7 Jac. 11.

ſpecial licence of the owner or poſſeſſioner of the ſame; upon pain of forfeiture of ten pounds, the one half thereof to the party that will ſue for the ſame by action of debt, or by bill, or otherwiſe, and the other half thereof to the owner or poſſeſſioner of the ſaid ground, upon the which the ſaid pheaſants and partridges be ſo taken. Alſo it is ordained by the ſaid authority, That no manner of perſon, of what condition or degree he be, take or cauſe to be taken, be it upon his own ground or any other man's, the eggs of any faulcon, goſhawks, laners, or ſwans, out of the neſt, upon pain of impriſonment of a year and a day, and fine at the king's will, the one half thereof to the king, and the other half to the owner of the ground where the eggs were ſo taken: and that the juſtices of the peace have authority by this preſent act to hear and determine ſuch matter, as well by inquiſition as information and proofs. Alſo it is ordained by the ſaid authority, That no man from the feaſt of *Paſch.* next coming, bear any hawk of the breed of *England* called a nyeſſe, goſhawk, taſſel, laner, laneret, or faulcon, upon pain of forfeiture of his hawk to the king, and the ſaid hawk to be at the king's pleaſure. And that all ſuch perſons as bring any nyeſſe hawk or hawks from any the parts beyond the ſea, bring a certificate under the cuſtomer's ſeal of the port where he firſt landed with the ſaid hawk or hawks: or if he come out of *Scotland*, then under the ſeal of the warden or lieutenant of that march that he cometh through, teſtifying that the ſame hawk or hawks be of the parts

The penalty for taking of hawks or ſwans eggs out of their neſts.

St. 31 H. 8. 12. Certain Engliſh hawks prohibited to be born.

He that bringeth a nyeſſe hawk from foreign parts ſhall bring a certificate.

parts beyond the ſea, or of *Scotland*, upon the ſame pain. And that the perſon that bringeth any ſuch hawk or hawks to the king, ſhall have a reaſonable reward of the king, or elſe the ſame hawk or hawks for their labour. Alſo it is ordained by the ſame authority, That no man take any ayrer, faulcon, goſhawk, taſſel, or laner, or lanerets in their warren or woods, or in other place, nor purpoſely drive them out of their coverts accuſtomed to breed in, to cauſe them to go to other coverts to breed, nor ſlay them for any hurt by them done, but ſuffer them to paſs at their liberties; upon pain of ten pounds, the one half thereof to the party that will ſue for the ſame by action of debt, by examination before the juſtices of the peace, information, or otherwiſe, and the other half to the king. Provided alway, that the moiety of the forfeiture aboveſaid, given to the owner of the ground for taking of ſwans eggs, be unto the owner of the ſaid ſwans, and not to the owner of the ground.

The penalty for taking, killing, or fearing of hawks.

By **Stat.** 23 *Eliz. c.* 10. If any manner of perſon ſhall hawk in another man's corn after it is eared, and before it is ſhocked, and be convicted at the aſſizes, ſeſſions, or leet, he ſhall forfeit forty ſhillings to the owner: and if not paid in ten days, he ſhall be impriſoned for a month.

Laws of the Game. (*Partridges and Pheaſants.*)

Stat. 11 *Hen.* 7. *c.* 17. *See this ſtatute under* title *Hawks and hawking.*

Stat. 23 *Eliz. c.* 10.

WHERE the game of pheaſants and partridges is within theſe few years in manner utterly decayed and deſtroyed, in all parts of this realm, by means of ſuch as take them with nets, ſnares, and other engines, and devices, as well by day as by night, and alſo by occaſion of ſuch as do uſe hawking in the beginning of harveſt, before the young pheaſants and partridges be of any bigneſs, to the great ſpoil and hurt of the corn and graſs then ſtanding and growing in the fields.

2. For reformation thereof, Be it enacted, eſtabliſhed, and ordained by the queen our ſovereign lady, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no manner of perſon or perſons, of what eſtate, degree, or condition ſoever, ſhall at any time or times, from and after the firſt day of *April* next enſuing, take, kill, or deſtroy any pheaſants or partridges, with any manner of nets, ſnares, gins, engines, rowſting, lowſing, or other devices whatſoever, in

The penalty for taking or killing of pheaſants, or partridges in the night. 11 *H.* 7. 17.

in the night-time; upon pain of forfeiture for every pheaſant ſo taken, killed, or deſtroyed contrary to the true meaning of this act, the ſum of twenty ſhillings, and for every partridge ſo taken, killed, or deſtroyed, the ſum of ten ſhillings. The which ſaid penalties and forfeitures, if every perſon or perſons ſo offending, do not pay within ten days next after his or their conviction, then to have one month's impriſonment without bail or mainprize; and further, over and beſides ſuch forfeiture or impriſonment, to put in bond with good ſureties, for the ſpace of two years, that he ſhall not take, kill, or deſtroy any partridges, or pheaſants, contrary to the true meaning of this act; the ſame bond to be taken by ſome juſtice of the peace of the county where the ſaid offence ſhall be committed; the one half of all which ſaid ſeveral forfeitures to be to the chief lord or lords of the liberties, lordſhips, or manors, upon and in which the ſame ſhall be ſo taken, killed, or deſtroyed; and the other moiety to ſuch perſon or perſons as will ſue for the ſame in any of her majeſty's courts of record, by bill, plaint, or information; in which ſuit, no eſſoign, protection, or wager of law ſhall be allowed.

Who ſhall have the forfeitures, and by what means they ſhall be recovered.

3. Provided always, that if ſuch perſon, to whom the one half of the ſaid forfeiture is appointed for the taking, killing, or deſtroying of partridges or pheaſants, contrary to the tenor and true meaning of this act, ſhall diſpenſe with, licenſe, or procure any taking, killing or deſtroying of any partridges or pheaſants,

ſants, contrary to the form of this act, that then all ſuch forfeitures and penalties as ſuch perſon or perſons ſhould have by virtue of this act, ſhall be to the poor of the pariſh where ſuch taking, killing or deſtroying ſhall be committed, and that to be levied or recovered in manner and form aforeſaid, by any one of the churchwardens of the pariſh where the offence ſhall be committed.

5. Provided always, that the juſtices of aſſizes in their circuits, and juſtices of the peace in every ſhire, county and town corporate within this realm, in their ſeſſions, within their ſeveral limits of their commiſſion, and ſtewards of leets, liberties and lawdays, within their ſeveral juriſdictions, ſhall and may by virtue hereof hear, enquire and determine of all and every offence or offences which ſhall be committed within the precinct of their liberties, juriſdictions, or franchiſes, againſt the tenor of this act: and further, that every juſtice of the peace within every county of this realm, ſhall within the limits of his commiſſion have power and authority by virtue hereof, to examine all offenders in the premiſſes within the county where he is or ſhall be juſtice, if ſo be that the ſaid offence or offences ſhall not be heard or determined by the juſtices of aſſize in their circuits, or by the ſtewards of leets, liberties, or lawdays, within their ſaid ſeveral juriſdictions; and alſo take bond with good ſureties for his and their appearance that ſhall ſo offend, to appear at the next general ſeſſions of the peace to be holden in the ſame county where the

ſame offence ſhall be committed, to anſwer the ſaid offence, and to pay the penalties, or receive the puniſhment by this act appointed or limited.

6. Provided always, that this act ſhall not in any wiſe extend to lowbellers, cramellers, or others, which ſhall unlawfully happen to take any partridges or pheaſants by right under any cramel, lowbel, roadnet, or other engine, ſo as they and every of them do preſently looſe and let go every pheaſant and partridge ſo taken, and ſuffer preſently to fly and go at large at the place where they ſhall happen ſo to be taken, without willingly killing, or wilfully hunting any ſuch pheaſant or partridge ſo taken in any manner of ſort; any thing in this act contained to the contrary notwithſtanding.

Stat. 1 *Jac.* 1. *c.* 27. See this act under title *Hares.*

Stat. 7 *Jac.* 1. *c.* 11.

WHEREAS in the firſt ſeſſion of this preſent parliament there was a good law made amongſt other things for the preſervation of the game of pheaſants and partridges, which hath not yielded that good ſucceſs, as was by the ſame law hoped for and intended, through diſorderly and unſeaſonable hawking, whereby great quantity of corn and grain hath been and is not only uncharitably ſpoiled and deſtroyed, but great numbers of pheaſants and partridges thereby killed and ſpoiled, before they be either fit to be hawked at, or to be uſed for food or diet.

The penalty for killing of any pheaſant or partridge by hawking between the firſt day of July and the laſt day of Auguſt.

For the preventing of both which inconveniencies and miſchiefs, Be it enacted by the authority of this preſent parliament, That all and every perſon or perſons whatſoever, which at any time after the end of this preſent ſeſſion of parliament doth or ſhall hawk at, deſtroy, or kill any pheaſant or pheaſants, partridge or partridges, with any kind of hawk or hawks, dog or dogs, by colour of hawking, between the firſt day of *July* and the laſt day of *Auguſt*, and the ſame offence or offences, being proved by the confeſſion of the party, or by the teſtimony of two ſufficient witneſſes, upon oath before two or more juſtices of the peace of the ſaid county, city, or town corporate, wherein the offence ſhall be committed, or the party offending apprehended, ſhall be by the ſaid juſtices of the peace for every ſuch offence committed to the common gaol of the ſaid county, city or town corporate, where the offence ſhall be committed, or the parties apprehended, there to remain for one whole month without bail or mainprize, unleſs that the ſaid offender do or ſhall forthwith upon the ſaid conviction pay, or cauſe to be paid, to the churchwardens of the ſaid pariſh, or unto the overſeers of the poor, or ſome of them, where the ſaid offence ſhall be committed, or the party apprehended, to the uſe of the poor of the ſame pariſh, the ſum of forty ſhillings for every ſuch hawking at any pheaſant or partridge, and twenty ſhillings for every ſuch pheaſant or partridge, which any and every ſuch perſon and perſons ſo offending and convicted (as aforeſaid) by himſelf, his hawk or hawks, dog or dogs, ſhall take, kill, or deſtroy, contrary to the true purport, intent, and meaning of this preſent ſtatute.

Provided always, and be it enacted by the authority aforeſaid, That if any perſon or perſons ſhall be at any time hereafter convicted and puniſhed by virtue of this law, that then the party ſo puniſhed ſhall not for the ſame offence be eftſoons called in queſtion, and puniſhed by virtue of any other law touching or concerning the like offence.

He that is puniſhed by this law, ſhall be excuſed for any other.

Provided alſo, That no offenders ſhall be impeached or puniſhed by virtue of this act, unleſs he or they be accuſed as delinquent, before the ſaid juſtices of peace, within ſix months next after the ſaid offence or offences committed or done.

Within what time an offender ſhall be accuſed.

And whereas by a proviſo in the ſaid ſtatute contained, it is provided, That it ſhall and may be lawful to and for every perſon and perſons, which have or ſhall have free warren, and to and for every lord of a manor, and to every freeholder, which is or ſhall be ſeiſed in his own right, or in the right of his wife, of lands, tenements, or hereditaments, to the clear yearly value of ten pounds or more by the year, over and above all charges and repriſes, of ſome eſtate of inheritance, or of lands, tenements, or hereditaments, in his own right, or in the right of his wife, for term of life or lives, of the yearly value of thirty pounds, over and above all charges and repriſes, or be, or which ſhall be worth in goods or chattels two hundred pounds, by him or themſelves, or by his or their menial ſervants (ſufficiently authorized from his or their maſter for that purpoſe) to take pheaſants and

A repeal of a branch of the ſtat. of 1 Jac. 27. allowing certain perſons to take pheaſants and partridges.

and partridges (in the day-time only) with nets in and upon his and their own or his or their maſter's free warren, manor, and freehold, or on any part of them, betwixt the feaſt of St. *Michael* the archangel, and the feaſt of the birth of our Lord God yearly; any thing in this ſaid law to the contrary notwithſtanding: by colour of which liberty ſo given by the ſaid proviſo, it is found by experience, that the ſaid games of pheaſants and partridges have been, and ſtill are likely to be much ſpoiled and deſtroyed by many mean tenants and freeholders, againſt the will of the lords or owners of inheritance of the ſaid lands and tenements:

Be it therefore enacted by the authority aforeſaid, That the ſaid proviſo, and every clauſe, article, and thing therein contained, ſhall be from the end of this preſent ſeſſion of parliament utterly repealed, fruſtrate, and made void; any thing in the ſaid proviſo contained to the contrary notwithſtanding.

Who may take pheaſants and partridges, where and when.

And that it ſhall and may be lawful for every perſon or perſons, which have or ſhall have free warren, and to and for every lord of a manor, and to and for every freeholder, which is or ſhall be ſeized in his own right, or in the right of his wife, of lands, tenements and hereditaments, to the clear yearly value of forty pounds, or more, by the year, over and above all charges and repriſes, of ſome eſtate of inheritance, or of lands, tenements and hereditaments, in his own right, or in the right of his wife, for term of life or lives, of the yearly value of fourſcore pounds over and above all charges or repriſes, or which ſhall be worth in goods or chattels four hundred pounds, by him or themſelves, or by his or their menial and houſhold ſervants (ſufficiently authorized from his or their maſter for that purpoſe) to take pheaſants and partridges (in the day-time only) in and upon his and their own, or his and the maſter's free warren, manor, and freehold, as aforeſaid, or on any part of them, betwixt the feaſt of St. *Michael* the archangel and the birth of our Lord God yearly; any thing in the ſaid law before mentioned to the contrary notwithſtanding.

And whereas the ſaid games of pheaſants and partridges are exceſſively ſpoiled and deſtroyed by baſe perſons, of bad and mean condition, making a trade and living of the ſpoiling and deſtroying of the ſaid games, who are not of ſufficiency to pay any penalty in any former ſtatute mentioned, nor to anſwer the coſts and charges of any that ſhould inform and proſecute againſt them in any of his majeſty's courts: by reaſon whereof, and for that the ſaid offenders are hardly diſcovered, and ſeldom or never found offending in the preſence of divers witneſſes, ſo that it is very hard to convict them by the teſtimony of more witneſſes than one, by reaſon that they ſpoil and deſtroy the ſaid games ſecretly, and for the moſt part in the night-time, and do carry ſuch pheaſants and partridges, as they ſo deſtroy, likewiſe by night, to cities and market-towns to be ſold: Be it therefore further enacted by the authority aforeſaid, That all and every perſon or perſons, which from and after the firſt day of *September* next ſhall take,

The penalty for taking any pheaſants or partridges with ſetting-dogs, nets, &c.

take, kill, or deſtroy any pheaſant or partridge, with ſetting-dogs and nets, or otherwiſe with any manner of nets, ſnares, or engines, and the ſame offence or offences being proved by the confeſſion of the party, or by the teſtimony of one ſufficient witneſs, upon oath before two or more juſtices of the peace of the ſame county, city, or town corporate, wherein the offence ſhall be committed, or the party offending apprehended, ſhall be by the ſaid juſtices of peace for every ſuch offence committed to the common gaol of the ſaid county, city, or town corporate, where the offence ſhall be committed, or the party apprehended, there to remain three months without bail or mainprize, unleſs that the ſaid offender ſhall forthwith pay, or cauſe to be paid, to the churchwardens or overſeers of the poor of the ſaid pariſh, where the ſaid offence ſhall be committed, the ſum of twenty ſhillings for every pheaſant or partridge, which any and every ſuch perſon or perſons ſo offending ſhall take, kill, or deſtroy, as aforeſaid, contrary to the purport and true meaning of this ſtatute, and further to become bound, by recognizance, in the ſum of twenty pounds to his majeſty, his heirs, and ſucceſſors, with condition that he the ſaid party ſo offending ſhall not at any time thereafter take, kill, or deſtroy any pheaſant or partridge; which ſaid recognizance ſhall be taken by any one or more juſtices of peace of the ſaid county, city, or town corporate, where the ſaid offence ſhall be committed, as aforeſaid, and ſhall be returned to the then next quarter-ſeſſions, and there to remain of record, as other recognizances taken for the peace.

Officers may ſearch the houſes of perſons ſuſpected to offend.

And be it further enacted, That every conſtable and headborough, in every county, city, town corporate, and other place where they ſhall be ſworn officers, ſhall and may by virtue of this preſent act (bringing with them to that purpoſe a lawful warrant under the hands of two juſtices of the peace of the county, city, liberty, or town corporate) have full power and authority to enter into; and ſearch the houſe or houſes of any perſon or perſons (other than ſuch as by this preſent act are allowed to take pheaſants and partridges, with nets, as aforeſaid) being ſuſpected to have any ſetting-dogs or nets, for the taking of pheaſants and partridges, and whereſoever they find any ſuch ſetting-dogs or nets, the ſame to take, carry away, and detain, kill, deſtroy, and cut in pieces, as things prohibited by this act, and forfeited to ſuch of the ſaid officers as ſhall find out and take the ſame, as aforeſaid.

By Stat. 9 *An. c.* 25. If any perſon whatſoever ſhall take or kill any pheaſant or partridge in the night-time, he ſhall on conviction, before one juſtice, on oath of one witneſs, forfeit 5 *l.* half to the informer, and half to the poor, by diſtreſs and ſale of the offender's goods; and for want of diſtreſs to be ſent to the houſe of correction for three months, for the firſt offence, and for every other offence four months.

(*Pigeons.*)

A Lord of a manor may build a dove-coat, upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248.

But any freeholder may erect a dove-coat on his own ground. *Cro. Eliz.* 548. *Cro. Jac.* 382.

If pigeons come upon my land and I kill them, the owner hath no remedy againſt me; tho' I may be liable to the ſtatutes which make it penal to deſtroy them. *Cro. Jac.* 492.

Doves in a dove-houſe, young and old, ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

See ſtat. 1 Jac. 1. c. 27. ſect. 2. *under title* Hares.

Stat. 2 *Geo.* 3. *c.* 29.

After 24 June 1762, any perſon who ſhall wilfully ſhoot at, or deſtroy any houſe doves or pigeons belonging to other perſons,

AFTER the twenty-fourth day of *June* one thouſand ſeven hundred and ſixty-two, if any perſon or perſons ſhall ſhoot at, with an an intent to kill, or ſhall by any means whatever kill or take, with a wilful intent to deſtroy, any houſe dove or pigeon, and ſhall be thereof convicted by the confeſſion of the party offending, or the oath of one or more credible witneſs or witneſſes, before one or more juſtice or juſtices of the peace of the county, city, town corporate, diviſion, riding, or place (which oath ſuch juſtice or juſtices are hereby authorized to adminiſter) wherein any ſuch offence or offences ſhall be committed, or the party or parties offending ſhall be apprehended; every perſon ſo offending, and who ſhall be convicted as aforeſaid of any ſuch offence, ſhall, for every ſuch offence, forfeit and pay the ſum of twenty ſhillings, to the perſon or perſons who ſhall inform againſt, and proſecute to conviction, any ſuch offender or offenders; and in caſe the money ſo forfeited ſhall not be forthwith paid on every ſuch conviction, it ſhall and may be lawful for ſuch juſtice or juſtices to commit any ſuch offender or offenders, who ſhall be ſo convicted as aforeſaid, to the common gaol of the county, or the houſe of correction in the diviſion or place where the party is convicted or apprehended, there to remain and be kept to hard labour for any time not exceeding three calendar months, nor leſs than one calendar month, as any ſuch juſtice or juſtices ſhall order, unleſs the money forfeited ſhall be ſooner paid.

ſhall forfeit on conviction, 20 s. to the proſecutor;

and if not forthwith paid, he may be committed, and kept to hard labour for any time not exceeding 3, nor leſs than 1 month, unleſs the forfeiture be ſooner paid.

2. Provided always, and it is hereby alſo enacted, That nothing in this act contained ſhall be conſtrued, deemed, or taken, to hinder any owner of a dove cote, pigeon houſe, pigeon chamber, or any other place, built up or erected, or to be built up or erected, for the preſervation or breeding of pigeons, from taking, killing, or deſtroying, by himſelf, or any other perſon by him appointed or authorized for that purpoſe, all or any houſe doves, or pigeons, which ſhall at any time be taken in the proper dove cote, pigeon houſe, pigeon chamber, or any other place, as aforeſaid, for the preſervation or breeding of pigeons of any owner of ſuch dove cote, pigeon houſe, pigeon chamber or other place.

The owners of dove cotes, or other places built for the preſervation or breeding of pigeons, and thoſe appointed by them excepted.

3. Pro-

Offender is liable only to one conviction for the ſame offence; and proſecutions are to be commenced, and carried on with effect, within two months after the offence; and where perſons ſuffer impriſonment, they are not liable afterwards to pay the penalty.

3. Provided further, and it is hereby alſo enacted, That no perſon who ſhall be convicted of any offence againſt this act, ſhall be liable to be convicted for any ſuch offence under any former or other act; and that no perſon ſhall be proſecuted for any offence againſt this act, unleſs the proſecution for the ſame ſhall be commenced and carried on with effect within the ſpace of two calendar months after every ſuch offence ſhall be committed; and that where any perſon ſhall ſuffer impriſonment for default of payment of any penalty impoſed under this act, ſuch perſon ſhall not be liable afterwards to pay ſuch penalty.

(Swans.)

BY ſtatute 22 *Ed.* 4. *c.* 6. No perſon (other than the king's ſon) unleſs he have lands of freehold to the value of five marks a year, ſhall have any mark or game of ſwans, on pain of forfeiting the ſwans, half to the king, and half to any perſon, (ſo qualified) who ſhall ſeize the ſame.

It is felony to take any ſwans, that are lawfully marked tho' they be at large. And as to ſwans unmarked, if they be domeſtical or tame, that is, kept in a moat, or in a pond near to a dwelling houſe, to ſteal ſuch is alſo felony. So it ſeemeth of ſwans unmarked, ſo long as they keep within a man's manor, or within his private rivers; or if they happen to eſcape from thence, and be purſued and taken, and brought in again. But if ſwans that are unmarked ſhall be abroad, and ſhall attain to their natural liberty, then the property of them is loſt; and ſo long felony cannot be committed by taking them. And yet ſuch unmarked and wild ſwans the king's officers may ſeize (being abroad) for the king's uſe, by his prerogative. Alſo the king may grant them, and by conſequence another may preſcribe to have them, within a certain precinct or place. *Dalt. ch.* 156.

See **Stat.** 11 *Hen.* 7. under title *Hawks and hawking*; and **Stat.** 1 *Jac.* 1. *c.* 27. under title *Hares.*

(*Wild* or *Water Fowl.*)

Stat. 25 *Hen.* 8. *c.* 11. *ſect.* 2.

IT ſhall not be lawful, between the laſt of *May* and the laſt of *Auguſt*, to take wild fowl with nets or other engines, upon pain of one year's impriſonment, and to forfeit for every fowl 4 *d.* the one half to the king, and the other half to him that will ſue for the ſame by action of debt, *&c.*

3. Juſtices of peace ſhall have power to enquire, hear and determine, the offences aforeſaid, as in caſes of treſpaſs.

4. It ſhall be lawful to any gentleman, or any other that may diſpend forty ſhillings by the year of freehold, to hunt and take ſuch wild fowl with their ſpaniels only, without uſing any net or other engines, except long-bows.

5. From the firſt of *March* to the laſt of *June* yearly, no perſon ſhall withdraw, take, deſtroy or convey, any eggs of wild fowl from or in any neſt where they ſhall be laid, upon

pain of impriſonment for one year, and to forfeit for every egg of any crane or buſtard 20*d.* and for every egg of bittour, heron or ſhovelard 8 *d.* and for every egg of mallard, teal or other wild fowl 1 *d.* the one moiety to the king, and the other half to him that will ſue for the ſame; and all juſtices of peace ſhall have power to enquire, hear and determine the ſame.

6. This act ſhall not extend to any perſons that will deſtroy crows, choughs, ravens and buzzards, or their eggs, or any other fowl, or their eggs, not uſed to be eaten.

Stat. 1 *Jac.* 1. *c.* 27. See this ſtatute under title *Hares.*

Stat. 9 *Ann. c.* 25. *ſect.* 4. If any perſon whatſoever [between *June* 1. and *Oct.* 1. yearly, by 10 *Geo.* 2. *ca.* 32.] ſhall by hayes, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of reſort for wild fowl in the moulting ſeaſon; and ſhall be convicted thereof before one juſtice by the oath of one witneſs; he ſhall for every ſuch fowl forfeit 5 *s.* half to the informer, and half to the poor, by diſtreſs; rendring the overplus above the penalty and charges of diſtreſs; and for want of diſtreſs, to be committed to the houſe of correction, not exceeding one month, nor leſs than fourteen days, to be whipt and kept to hard labour, and the nets to be ſeized and deſtroyed in the preſence of the juſtice.

FINIS.

APPENDIX.

STAT. 5 *G.* 3. *c.* 14. Intituled, An act for the more effectual preſervation of fiſh in fiſh-ponds and other waters; and conies in warrens; and for preventing the damage done to ſea banks, within the county of *Lincoln*, by the breeding conies therein.

Sect. 1. Whereas the ſeveral laws in being for the preſervation of the fiſh in rivers, ponds, pools, moats, ſtews and other waters, are by experience found to be ineffectual to deter divers looſe, idle and diſorderly perſons, from ſtealing, taking away, or deſtroying, the fiſh therein bred and preſerved; Be it therefore enacted, That in caſe any perſon or perſons from and after the firſt day of *June* 1765, ſhall enter into any park or paddock fenced in and incloſed, or into any garden, orchard or yard, adjoining or belonging to any dwelling-houſe, in or through which parks or paddocks, garden, orchard or yard, any river or ſtream of water ſhall run or be, or wherein ſhall be any river, ſtream, pond, pool, moat, ſtew or other water, and by any ways, means or device whatſoever, ſhall ſteal, take, kill or deſtroy, any fiſh bred, kept or preſerved, in any ſuch river, ſtream, pond, pool, moat, ſtew or other water aforeſaid, without the conſent of the owner or owners thereof; or ſhall be aiding or aſſiſting in the ſtealing, taking, killing or deſtroying, any ſuch fiſh as aforeſaid; or ſhall receive or buy any ſuch fiſh knowing the ſame to be ſo ſtolen or taken as aforeſaid;

After 1ſt June 1765, perſons convicted, within 6 months after the offence, of ſtealing or deſtroying fiſh in fiſh ponds, &c.

or aiding or aſſiſting therein; or knowingly receiving or buying ſuch fiſh;

and being thereof indicted within ſix calendar months next after ſuch offence or offences ſhall have been committed, before any judge or juſtices of gaol delivery for the county wherein ſuch park or paddock, garden, orchard or yard, ſhall be, and ſhall on ſuch indictment be, by verdict, or his or their own confeſſion or confeſſions, convicted of any ſuch offence or offences as aforeſaid; the perſon or perſons ſo convicted ſhall be tranſported for ſeven years.

are to be tranſported for 7 years.

Sect. 2. And for the more eaſy and ſpeedy apprehending and convicting of ſuch perſon or perſons as ſhall be guilty of any of the offences before-mentioned, Be it enacted, That in caſe any perſon or perſons ſhall, at any time after the ſaid firſt day of *June*, commit or be guilty of any ſuch offence or offences as are herein before-mentioned, and ſhall ſurrender himſelf to any one of his Majeſty's juſtices of the peace in and for the county where ſuch offence or offences ſhall have been committed; or being aprehended and taken, or in cuſtody for ſuch offence or offences, or on any other account, and ſhall voluntarily make a full confeſſion thereof, and a true diſcovery, upon oath, of the perſon or perſons who was or were his accomplice or accomplices in any of the ſaid offences, ſo as ſuch accomplice or accomplices may be apprehended and taken, and ſhall, on the trial of ſuch accomplice or accomplices, give ſuch evidence of ſuch offence or offences, as ſhall be ſufficient to convict ſuch accomplice or accomplices thereof; ſuch perſon making ſuch confeſſion and diſcovery, and giving ſuch evidence as aforeſaid, ſhall by virtue of this act be pardoned, acquitted and diſ-

Any offender making a diſcovery of, and convicting his accomplices, is intitled to pardon.

diſcharged, of and from the offence or offences ſo by him confeſſed as aforeſaid.

Sect. 3. And be it further enacted, That in caſe any perſon or perſons ſhall, after the firſt day of *June*, take, kill or deſtroy, or attempt to take, kill or deſtroy, any fiſh, in any river or ſtream, pond, pool or other water (not being in any park or paddock, or in any garden, orchard or yard, adjoining or belonging to any dwelling-houſe, but ſhall be in any other incloſed ground which ſhall be private property) every ſuch perſon, being lawfully convicted thereof by the oath of one or more credible witneſs or witneſſes, ſhall forfeit and pay for every ſuch offence the ſum of five pounds, to the owner or owners of the fiſhery of ſuch river or ſtream of water, or of ſuch pond, pool, moat or other water: And it ſhall and may be lawful to and for any one or more of his majeſty's juſtices of the peace of the county, diviſion, riding or place, where ſuch laſt mentioned offence or offences ſhall be committed, upon complaint made to him or them, upon oath, againſt any perſon or perſons, for any ſuch laſt mentioned offence or offences, to iſſue his or their warrant or warrants to bring the perſon or perſons ſo complained of, before him or them; and if the perſon or perſons ſo complained of ſhall be convicted of any of the ſaid offences laſt mentioned, before ſuch juſtice or juſtices, or any other of his majeſty's juſtices of the ſame county, diviſion, riding or place aforeſaid, by the oath or oaths of one or more credible witneſs or witneſſes, which oath ſuch juſtice or juſtices are hereby authorized to adminiſter, or by his or their own con-

Perſons convicted of taking or deſtroying, &c. fiſh in rivers or other waters,

forfeit to the owner of the fiſhery 5 *l.*

On complaint of the offence, juſtice to iſſue his warrant for apprehending the offender;

and the penalty to be paid down upon conviction;

confeſſion; then, and in ſuch caſe, the party ſo convicted ſhall, immediately after ſuch conviction, pay the ſaid penalty of five pounds, hereby before impoſed for the offence or offences aforeſaid, to ſuch juſtice or juſtices before whom he ſhall be ſo convicted, for the uſe of ſuch perſon or perſons as the ſame is hereby appointed to be forfeited and paid unto; and, in default thereof, ſhall be committed by ſuch juſtice or juſtices to the houſe of correction, for any time not exceeding ſix months, unleſs the money forfeited ſhall be ſooner paid.

otherwiſe the offender to be committed to the houſe of correction for ſix months; or an action may be brought for the penalty in any of the courts at *Weſtminſter*,

Sect. 4. Provided nevertheleſs, That it ſhall and may be lawful to and for ſuch owner or owners of the fiſhery of ſuch river or ſtream of water, or of ſuch pond, pool or other water, wherein any ſuch offence or offences laſt mentioned ſhall be committed as aforeſaid, to ſue and proſecute for, and recover the ſaid ſum of five pounds, by action of debt, bill, plaint or information, in any of his Majeſty's courts of record at *Weſtminſter*; and in ſuch action or ſuit, no eſſoin, wager of law, or more than one imparlance ſhall be allowed; provided that ſuch action or ſuit be brought or commenced, within ſix calendar months next after ſuch offence or offences ſhall have been committed.

within 6 months after the offence.

None liable to forfeit for taking fiſh in any river, &c. wherein they have a right.

Sect. 5. Provided always, and be it further enacted by the authority aforeſaid, That nothing in this act ſhall extend, or be conſtrued to extend, to ſubject or make liable any perſon or perſons to the penalties of this act, who ſhall fiſh, take or kill, and carry away any fiſh, in any river or ſtream of water, pond, pool or other water, wherein ſuch perſon or perſons ſhall have a juſt right or claim to take, kill or carry away any ſuch fiſh.

Sect. 6. And whereas there are many thouſand acres of land in this kingdom altogether unfit for cultivation, and yet the ſame are capable of rendering great profit, by the breeding and maintaining conies as well to the owners of ſuch lands, as to a multitude of induſtrious manufacturers, who gain their livelihood by working upon coney wool: And whereas a great part of the ſaid land is already uſed as warrens, in the breeding and maintaining conies, but, becauſe divers diſorderly perſons, neglecting their own lawful trades, have betaken themſelves to the taking, killing and ſtealing of conies, in the night-time, whereby the owners and occupiers of ſuch warrens are greatly diſcouraged, and many ſuch owners and occupiers have been induced to deſtroy ſuch warrens, and others have been deterred from ſtocking other lands, to the great prejudice of the manufactures of this kingdom: And whereas the proviſions already ſubſiſting have, by experience, been found inſufficient for the effectual preſervation of conies in warrens; for remedy thereof, Be it further enacted, That if any perſon or perſons ſhall, from and after the firſt day of *June* 1765, wilfully and wrongfully, in the night-time, enter into any warren or grounds lawfully uſed or kept for the breeding or keeping of conies, although the ſame be not incloſed, and ſhall then and there wilfully and wrongfully take or kill, in the night-time, any coney or conies, againſt the will of the owner or occupier thereof, or ſhall be aiding and aſſiſting therein, and ſhall be convicted of the ſame before any of his

Perſons convicted of entering warrens, in the night time, and taking or killing conies there,

or aiding or aſſiſting therein,

Majeſty's juſtices of oyer and terminer, or general gaol-delivery, for the county where ſuch offence or offences ſhall be committed; every ſuch perſon and perſons ſo offending, and being thereof lawfully convicted in manner aforeſaid, ſhall and may be tranſported for the ſpace of ſeven years, or ſuffer ſuch other leſſer puniſhment by whipipng, fine or impriſonment, as the court, before whom ſuch perſon or perſons ſhall be tried, ſhall, in their diſcretion, award and direct.

may be puniſhed by tranſportation, or by whipping, fine or impriſonment.

Sect. 7. Provided always, and be it enacted, That no perſon who ſhall be convicted of any offence againſt this act, ſhall be liable to be convicted for any ſuch offence under any former act or acts, law or laws, now in force.

Perſons convicted on this act, not liable to be convicted under any former act.

Sect. 8. And whereas great miſchief and damage has been, and ſtill may be, occaſioned by the increaſe of the conies upon the ſea and river banks in the county of *Lincoln*, or upon the land or ground within a certain diſtance from the ſaid banks: for remedy thereof, Be it enacted by the authority aforeſaid, That nothing in this act contained ſhall extend, or be conſtrued to extend, to prevent any perſon or perſons from killing or deſtroying, or from taking and carrying away, in the day-time, any conies that ſhall be found in any ſea or river banks, erected or to be erected, for the preſervation of the adjoining lands from being overflowed by the ſea or river water ſo far as the flux and reflux of the tide does or ſhall extend, or upon any land or ground within one furlong diſtance of ſuch ſea or river banks, but that it ſhall and may be lawful to and for any perſon or perſons, to enter upon any ſuch banks, land or ground, as aforeſaid, within the

This act not to extend to the deſtroying conies, in the day-time, on the ſea and river banks in the county of *Lincoln*, &c.

the ſaid county of *Lincoln*, and to kill, deſtroy, take and carry away in the day-time, to his or their own uſe, any conies ſo found upon any ſuch banks, land or ground, as aforeſaid, within the ſaid county, he or they doing as little damage as may be to the owner or tenant of ſuch banks, land or ground; any thing in this act contained to the contrary notwithſtanding.

Sect. 9. Provided alſo, That no perſon or perſons ſhall be obliged to make ſatisfaction for any damages that may be occaſioned by ſuch entry, unleſs ſuch damages ſhall exceed the ſum of one ſhilling.

No ſatisfaction to be made for damages occaſioned by entry, unleſs they exceed 1*s*.

•

Caſes adjudged on the Game acts in the King's Bench *ſince Lord* Manſfield's *coming to preſide in that court.*

THIS was a conviction, (which ſtood in the crown paper) upon 5 *A. c.* 14. [ſee p. 276.] It was made by *John Bytheſea* and *John Turner*, Eſq; two of his Majeſty's juſtices of the peace for the county of *Wilts*; and was to the effect following. Be it remembered, That on &c. *John Webb* of the pariſh of *Hilperton* in the county of *Wilts* aforeſaid, yeoman, in his own proper perſon, cometh before us, *&c.* juſtices, *&c.* And now he giveth us the ſaid juſtices to underſtand and be informed that one *Maurice Jarvis* of *Throwbridge* in the county of *Wilts* labourer, within three months now laſt paſt, that is to ſay, on the 4th day of *December* now laſt paſt, in the 28th year, *&c.* with force and arms, in a certain field commonly called, *&c.* lying and being within the pariſh of *Hilperton* aforeſaid in the county of *Wilts* aforeſaid, did unlaw-

Conviction on the game-acts, muſt *particularly and negatively* ſpecify that the perſon convicted had not any of the qualifications required by 22 & 23 *Car.* 2. *c.* 25. *Bur. Rep.* 148—154. *Hil.* 30 *Geo.* 2. *Rex* v. *Maurice Jarvis.*

unlawfully keep and uſe, and had in his cuſtody and poſſeſſion one ſetting-dog and ſetting-net for the deſtruction of the game; and did then and there ride with and hunt the ſaid ſetting-dog, with an intent to kill and deſtroy the game; he the ſaid *Maurice Jarvis*, at the time and place when he ſo kept and uſed the ſaid ſetting-dog and net and had the ſame in his cuſtody and poſſeſſion, was not qualified by any laws or ſtatutes of his realm, to kill game or to keep or uſe any nets, dogs or other engines for the deſtruction of the game; contrary to the form of the ſtatutes in that caſe made and provided. And thereupon afterwards, that is to ſay on the 12th day, *&c.* at *&c.* aforeſaid, *Thomas Webb*, ſervant and game-keeper to *Edward Eyles*, Eſq; for the manor of *Hilperton* aforeſaid in the county of *Wilts* aforeſaid, a credible witneſs in this behalf, in his own proper perſon, cometh before us, *&c.* and taketh his corporal oath on the holy Goſpel of God, to ſpeak the truth of and concerning the premiſſes abovementioned and ſpecified in the ſaid information before us the ſaid, *&c.* the juſtices aforeſaid, having ſufficient power and authority to adminiſter the ſaid oath to the ſaid *Thomas Webb* in this behalf: And the ſaid *Thomas Webb* being ſo ſworn as aforeſaid, afterwards, that is to ſay, on the ſaid 12th day, *&c.* upon his ſaid oath ſo taken before us the ſaid juſtices aforeſaid, ſaith, depoſeth and ſweareth, of and concerning the premiſſes aforeſaid in the ſaid information abovementioned and ſpecified, " That, *&c.* [fully proving the fact;] he the ſaid *M. Jarvis* at the time and place when he ſo kept and uſed the ſaid ſetting-dog and net and had the ſame in his cuſtody and poſſeſſion, was not qualified by any laws or ſtatutes of this realm, to kill game, or to keep or uſe any nets, dogs, guns or other engines for the deſtruction of game, contrary to the form of the ſtatutes in that caſe made and provided." Whereupon the ſaid *M. J.* having firſt been duly ſummoned in this behalf to anſwer the premiſſes, and having due notice thereof, afterwards, that is to ſay, at the houſe of *&c.* appearing and being preſent in his proper perſon before us the ſaid, *&c.* And the ſaid *Thomas Webb* the witneſs aforeſaid alſo appearing and being preſent before us the ſaid juſtices; and the information aforeſaid and the matter therein contained, and alſo the ſaid evidence thereupon given, having been heard and underſtood by the ſaid *M. J.* in the preſence of the ſaid *Thomas Webb* the witneſs aforeſaid and of us the ſaid juſtices, he the ſaid *Maurice Jarvis* is aſked by us the ſaid juſtices, "If he the ſaid *M. J.* hath, knoweth or can ſay any thing for himſelf in his own defence, touching and concerning the premiſſes aforeſaid; and why he the ſaid *M. J.* ſhould not be convicted of the premiſſes aforeſaid, charged on him in and by the ſaid information." And the ſaid *Maurice Jarvis*, now here before us the ſaid juſtices, denies that he did keep and uſe the ſaid ſetting-dog and net, and had the ſame in his cuſtody and poſſeſſion, in manner and form as is above charged on him: But ſhews no ſufficient cauſe before us the ſaid juſtices, why he ſhould not be convicted of the offence aboveſaid charged on him in the ſaid information. And upon hearing and examining the whole matter aforeſaid, and every thing alleged by the ſaid *Maurice Jarvis* touching and concerning the premiſſes aforeſaid, It manifeſtly and plainly appears unto us the ſaid juſtices, that the ſaid *M. J.* was not then any wiſe qualified, impowered, licenſed or authoriſed, by or according to the laws of this realm, to kill game; and that the ſaid *M. J.* is guilty of the premiſſes aforeſaid charged on him and in by the ſaid information. Therefore it is now here conſidered and adjudged by us the ſaid juſtices, that the ſaid *M. J.* upon the teſtimony of the ſaid *Thomas Webb* the witneſs aforeſaid, on his oath before us the ſaid juſtices ſo taken as aforeſaid, be and is convicted of the premiſſes aforeſaid, according to the form of the ſtatutes in ſuch caſe made and provided; and that the ſaid *M. J.* do forfeit the ſum of 5 *l.* for the offence aforeſaid, as the ſtatute directs, *&c.*

Mr. *Gould* for the defendant took exceptions to this conviction. And Mr. *Norton* argued for the plaintiff.——

Lord *Mansfield* ſaid it was needleſs to enter into many reaſons for quaſhing this conviction, when one alone is fully ſufficient. It is now ſettled by the uniform courſe of authorities, that the qualifications muſt be all negatively ſet out: otherwiſe, the juſtices have no juriſdiction over the perſons killing game or keeping dogs or engines for the deſtruction of it. The *obiter* ſaying in 10 *Mod.* (if it was a book of better authority than it is,) would ſignify nothing, when the determinations are the other way. There is a great difference between the purview of an act of parliament, and a proviſo in an act of parliament. In the caſe of *Rex* v. *Marriot*, *Mich.* 4 *Geo.* 1. *B. R.* [1 *Strange* 66] where the witneſs only ſwears generally; it was holden inſufficient: And the juſtices who convict upon the evidence of the witneſs, can have no other or further ground to go upon than what the witneſs ſwears. In the caſe of *Rex* v. *Hill*, 2 Ld. *Raym*. 1415. in this court, *H.* 12 *Geo.* 1. It is the very point eſtabliſhed and ſettled, "That the general averment is not ſufficient; and that it muſt be averred that the defendant had not the particular qualifications mentioned in the ſtatute, as to degree, eſtate, *&c.*" In the caſe of *Bluet qui tam* v. *Needs*, *Comyns* 525. the general averment "of the defendant's not being qualified," was holden to be ſufficient upon an action; tho' inſufficient upon a conviction. The diſtinction is obvious between an action and a conviction. And there it was agreed (and it is given as a reaſon why it is not good upon conviction,) "That it muſt be made out, before the juſtice, that the party had no ſuch qualification as the law requires," before the juſtice can convict him: And the juſtice muſt return "That he had no manner of qualification." Here, the witneſs ſwears only generally, "That the defendant was not qualified, *&c.*" The juſtices adjudge it generally only. The ſtream can go no higher than the ſpring head. So the concluſion which the juſtices draw from the teſtimony of the witneſs muſt be as general as that teſtimony. In the caſe of *Rex* v. *Pickles*, it was laid down as a rule, "That the want of the particular qualifications required by 22 & 23 *Car*. 2. *c*. 25. ought to be negatively ſet out in convictions:" And the only queſtion there was, whether it was neceſſary to add "Nor lord of a manor." *Exceptio probat Regulam*: Nor was the general rule, at all, doubted or diſputed, in that caſe. In indictments upon 8 & 9 *W.* 3. *c.* 26. for having a coining preſs, every thing which ſhews that the defendant had not authority, muſt be negatively ſet out. And ſo it was done, in the indictment of *Bell*, which was lately argued before all the judges. I take the point to be ſettled by the conſtant tenor of all the authorities; and I think upon very good reaſon, (if there was need to enter into the reaſon at large, after it has been fully ſettled already.) Therefore I am of opinion that the conviction ought to be quaſhed.

Mr. Juſtice *Deniſon* concurred with Lord *Mansfield.* He ſaid it was a clear caſe; and that it was fully ſettled and eſtabliſhed, "That in theſe convictions, the want of the particular qualifications mentioned in the act of 22 & 23 *Car.* 2. ought to be negatively ſet out:" If not, the juſtices have no juriſdiction to convict the defendant as an offender. And the evidence and adjudication ought, both of them, to be, "That he has not theſe qualifications, which are ſpecified in that act, nor any of them." Indeed you are not obliged to go further than the words of this act of parliament of 22 & 23 *Car.* 2. and that was the caſe of *Rex* v. *Pickles.* But however, in that caſe, the preſent point was eſtabliſhed and taken to be indiſputable. It is ſaid, that "It is ſufficient to lay the offence in the words of the act of parliament." But that is not always ſufficient: It may be neceſſary to go further. *P.* 28 *Geo.* 2. *B. R. Rex* v. *Chapman*, about robbing an orchard, was a caſe where the mere purſuing the words of the ſtatute was not ſufficient. But this point now before us is a ſettled caſe: And therefore there is no need to enter into arguments about it; the conviction ought to be quaſhed. Mr. juſtice *Foſter* concurred.

Placing conies upon commonable land by the lord is conſiſtent with the lord's grant: And the commoner can't *kill, chaſe* or *deſtroy* them, much leſs *dig* the burrows. *Bur. Rep.* 259—268. *Eaſt.* 30 *Geo.* 2. *Cooper* v. *Marſhall.*

This was an action of treſpaſs for breaking, entering and digging up the plaintiff's cloſe, and filling up and ſpoiling the coney-burrows there, &c. And there was a ſecond count for doing the like in the plaintiff's free warren. Several pleas were pleaded, by leave of the court. Plea, as to the firſt count was a juſtification under a right of common in 20 acres &c. and that the coney-burrows were wrongfully, unlawfully and injuriouſly newly erected and kept up there: By reaſon whereof the ſaid common was ſurcharged and ſpoiled; ſo that the defendant could not enjoy ſufficient common in the ſaid 20 acres, as of right he ought. And therefore he juſtifies the breaking, entering and digging up the plaintiff's cloſe, and filling up and ſpoiling the coney-burrows, as it was lawful for him to do, in order to abate the ſaid nuſance. There was alſo a ſecond juſtification, much to the ſame effect. To the ſecond count, were two juſtifications not much different from the former. The plaintiff demurs to theſe pleas: And the defendant joins in the demurrer. Mr. *Moreton* argued for the plaintiff, and Mr. *Aſhton* for the defendant.——

Lord *Mansfield.* The queſtion turns upon the remedy; whether it is abatable; whether the commoner can do himſelf juſtice. It may be prejudicial to the commoner, yet not injurious: It may be both prejudicial and injurious, yet not abatable. The lord by his grant of common, gives every thing incident to the enjoyment of it, (as ingreſs, egreſs, &c.) and thereby authorizes the commoner to remove every obſtruction to his cattle's grazing the graſs which

grows

grows upon ſuch a ſpot of ground: Becauſe every ſuch obſtruction is directly contrary to the terms of the grant. A hedge, a gate or a wall, to keep the commoner's cattle out, is inconſiſtent with a grant which give them a right to come in. But the lord ſtill remains owner of the ſoil; and is not debarred from exerciſing any act of ownerſhip. The commoner has no right to meddle with the ſoil. The true diſtinction is taken in the caſe of *Maſon* v. *Cæſar* in 2 *Mod.* 66. where the court was of opinion "That the defendant, a commoner, might abate the hedges; for thereby he did not meddle with the ſoil, but only pulled down the erection." The hedge ſtopped the commoner from entering, and putting in his beaſts. The grant gave him leave to enter, and put in his beaſts: Therefore it virtually authorized him to remove any objection directly repugnant to that liberty. But in the preſent caſe, the lord has done nothing contrary to the grant: He has not obſtructed the commoner from entering and putting in his cattle. The lord has a right to put conies upon his common: as appears from the caſe of *Carrill* v. *Pack* and *Baker*, in 2 *Bulſ.* 115, 116. The conies themſelves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord ſurcharges, the commoner is injured in his right of common, it is true: But what is the commoner's remedy? Not to abate: Not to be his own judge, in a complicated queſtion, which may admit of nicety to determine. There is a certain line to be drawn: The lord has a right ſo far; but no farther. Yet the commoner cannot deſtroy or drive off the conies: Nor, conſequently can he deſtroy the burrows; which is, in effect, deſtroying the conies. This is founded upon reaſon, and upon many authorities. Sir *Jerome Horſey*'s caſe, *Cro. Jac.* 229. 2 *Bulſt.* 115, 116. the caſe of *Carrill* v. *Pack* and *Baker*; and its being a free warren makes no difference. So that the queſtion is not, "Whether this be an injury;" but, "Whether it it is abatable." I think it is ſo clear a caſe, that I have no difficulty at all about it. Mr. juſtice *Deniſon* declared the ſame thing: And he ſaid he ſaw no difference between this caſe, and the caſes cited; but merely in the expreſſion, *viz.* that in this caſe it is treated as a nuſance; which is not the expreſſion, in them. But this form of expreſſion makes no difference. Upon this record, it muſt be taken, "That the plaintiff was owner of the ſoil, and had a free warren;" and that there is not "Sufficient common left, (by the increaſe of the conies) for the uſe of the commoner." The queſtion then is, "Whether the commoner be intruſted to deſtroy the eſtate of the lord, in order to preſerve his own ſmall right of common." 1 *Rol. Abr.* 405. *pl.* 2. gives the reaſon why the commoner cannot kill the conies, but ought to bring his aſſize or action; *viz.* "Becauſe he cannot be his own judge." So here, this juſtification would make him a judge in his own cauſe. No: let him take his proper remedy. This is plain reaſon; even if it was not ſupported by authorities: but the caſes are alſo ſtrong, to prove it. The only point of this caſe turns upon theſe pleadings calling it a nuſance. But this will not make it a nuſance abatable by the defendant himſelf; nor can it alter the law. In Sir *Jerome Horſey*'s caſe, *Cro. Jac.*

229. It was adjudged "That the commoner has no other intereſt than to take the common, by feeding his cattle there: And may not deſtroy the conies nor coney-burrows." A coney-burrow is not, of its own nature, a nuſance: On the contrary, it is eſſential to a free warren. Therefore the nuſance depends upon the number of them: And you can, at the utmoſt, only abate ſo much of the thing as is a nuſance. You cannot deſtroy the whole, (which is the right here claimed;) but only ſo much of the thing as makes it a nuſance. In Sir *J. S.* 688. in the caſe *Rex* v. *Papinneau*, Ld. Ch. J. *Raymond* expreſsly declares ſo. Suppoſe a man builds his houſe up ſo high, as to be a nuſance to his neighbour, by obſtructing his lights or in any other reſpect ariſing from its exceſs; you can't deſtroy the whole houſe; but only ſo much of it as by its exceſs above what is allowable, conſtitutes the nuſance.

Mr. juſtice *Foſter* was of the ſame opinion. This juſtification is clearly bad. It is founded on a claim of right which cannot be maintained. It is admitted "That a commoner cannot, in this caſe deſtroy the conies." Conſequently, he cannot deſtroy the burrows: for the effect is deſtroying the conies. If the lord has exceeded the bounds of his right, the law is to determine the *quantum* of ſuch exceſs; and to the law the commoner muſt reſort for his remedy, if he is aggrieved. *Per cur.* unanimouſly judgment for the plaintiff.

TABLE

TABLE
OF THE
TITLES, &c.

Conies.

Page
STAT. 21 Ed. 1. ſt. 2. An. Dom. 1293. 8, 9
Stat. 1 Hen. 7. c. 7. 9—12
Lord *Coke*'s commentary on the foregoing act 12—16
Stat. 3 Hen. 1. c. 13. 16—18
Stat. 22 & 23 Car. 2. c. 25. 18—21
Stat. 5 Geo. 3. c. 14. 329, 330
Adjudged caſes concerning conies 21—42, 337

Deer.

Stat. Weſt. 1. or 3 E. 1. An. Dom. 1275. 43, 44
Lord *Coke*'s commentary on the preceding act 44—47
Stat. 21 Ed. 1. ſt. 2. and 1 Hen. 7. c. 7. See theſe acts under **Conies.**
Stat. 19 Hen. 7. 47—49
Stat. 5 El. c. 21. See **Fiſh.**
Stat. 3 Jac. 1. c. 13. 49—54
Stat. 7 Jac. c. 13. 54—57
Stat. 13 Car. 2. c. 10. 57, 58
Stat. 3 & 4 W. & M. c. 10. 59—65
Stat. 5 Geo. 1. c. 15. 65—70

Page
Stat. 5 Geo. 1. c. 28. 70—72
Stat. 9 Geo. 1. c. 22. 72—85
Stat. 10 Geo. 2. c. 32. 85—88
Stat. 28 Geo. 2. c. 19. 88—90
Adjudged caſes relating to **Deer.** 91—136

Fiſh.

Stat. 3 Ed. 1 See this act under **Deer.**
Stat. 13 Ed. 1. c. 47. 137
Lord *Coke*'s commentary on the preceding act 137, 138
Stat. 13 Ric. 2. c. 19. 139, 140
Stat. 17 Ric. 2. c. 9. 140—143
Stat. 2 Hen. 6. c. 15. 143, 144
Stat. 1 Eliz. c. 17. 144—151
Stat. 5 Eliz. c. 21. 151—157
Stat. 3 Jac. 1. c. 12. 157—159
Stat. 4 & 5 W. & M. c. 23. 159—163
Stat. 10 & 11 W. 3. c. 24. 163—169
Stat. 4 & 5 Ann. c. 21. 169—176
Stat. 9 Ann. c. 26. 177—187
Stat. 1 Geo. 1. c. 18. 187—200
Stat. 9 Geo. 1. c. 22. See **Deer.**
Stat. 9 Geo. 2. c. 33. 200—205
Stat. 33 Geo. 2. c. 26. 206—230
Stat. 2 Geo. 3. c. 15. 231—263
Stat. 5 Geo. 3. c. 14. 325—328

Game (*in general,*) *and* Game-keepers.

Stat. 13 Ric. 2. c. 13. 264, 265
Stat. 33 Hen. 8. c. 6. 265—270
Stat. 22 & 23 Car. 2. c. 25. 270—272

Page
Stat. 4 & 5 W. & M. c. 23. 273—276
Stat. 5 Ann. c. 14. 276—281
Stat. 9 Ann. c. 25. 281—284
Stat. 3 Geo. 1. c. 11. 285—289
Stat. 2 Geo. 3. c. 19. 289—292

Grouſe *or* Moor-game.

Stat. 1 Jac. 1. c. 27. ſect. 2. See Hares.
Stat. 4 & 5 W. 3. c. 27. 293
Stat. 9 Ann. c. 25. ib.

Hares.

Stat. 14 & 15 Hen. 8. c. 10. 294, 295
Stat. 1 Jac. 1. c. 27. 295—300
Stat. 23 Eliz. c. 10. 300, 301
Stat. 22 & 23 Car. 2. c. 25. 301
Stat. 9 Ann. c. 25. ib.

Hawks *and* Hawking.

Stat. 34 Ed. 3. c. 22. 302
Stat. 37 Ed. 3. c. 19. 303, 304
Lord *Coke*'s commentary on the preceding act 304—307
Stat. 5 Eliz. c. 21. See page 151.
Stat. 11 Hen. 7. 307—309
Stat. 29 Eliz. c. 10. 309

Partridges *and* Pheaſants.

Stat. 11 Hen. 7. c. 17. See page 307.
Stat. 23 Eliz. c. 10. 310—313
Stat. 1 Jac. 1. c. 27. See page 295.

Page
Stat. 7 Jac. 1. c. 11. 313—319
Stat. 9 Ann. c. 25. 319

Pheaſants. See **Partridges.**

Pigeons. See page 320.

Stat. 2 Geo. 3. c. 29. 320—322

Swans. See page 322, 323.

Wild *or* **Water fowl.**

Stat. 25 Hen. 8. c. 11. 323, 324
Stat. 1 Jac. 1. c. 27. 324
Stat. 9 Ann. c. 25. ib.